# Petition

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1981

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NO. 81 5783

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LARRY FRAZIER,
Petitioner,

V.

STATE OF CONNECTICUT,
Respondent,

---

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

(Appendix Bound Separately)

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## QUESTIONS PRESENTED

1. Does The "Overriding Interest Articulated In Findings" Standard Established By Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, apply when the only opposition to a closure order is the Defendant's Assertion Of His Sixth Amendment Right To A Public Trial?

2. Should A Waiver Of The Privilege Against Be Considered As Intelligent And Knowing When At A Reading Of The "Miranda" Warnings, The Defendant Mainfested His Ignorance That He Could Incriminate Himself Through Oral Answers And The Police Did Not Attempt To Correct The Misconception?

## PARTIES TO THE PROCEEDINGS

1. LARRY FRAZIER, Petitioner, represented by Jerrold H. Barnett, Public Defender, 121 Elm Street, New Haven, Conn. 06510.

2. THE STATE OF CONNECTICUT, Respondent, represented by Donald A. Browne, State's Attorney, 1061 Main Street, Bridgeport, Conn. 06604

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF CONNECTICUT

---

The Petitioner, Larry Frazier, respectfully prays that a writ of certiorari issue to review the judgments and opinions of the Supreme Court of the State of Connecticut, rendered on August 11, 1981, and October 1, 1981.

## OPINIONS BELOW

The opinion of the Supreme Court of Connecticut on Petitioner's direct appeal has

not yet been officially reported. It is unofficially reported, however, in the Connecticut Law Journal, Volume 43, Number 6 page 16 (August 11, 1981) and it is printed in the separately bound Appendix hereto at pp. 2A-23A. No opinion was rendered by the Supreme Court of Connecticut on Petitioner's motion to reargue. The order that denied leave to reargue, dated October 1, 1981, is printed in the Appendix at p. 31A. When Petitioner's motion to reargue was denied, however, the Supreme Court of Connecticut, suo motu, amended part V of its opinion. A letter from that Court's Reporter of Judicial Decisions which announced the amendment and the amendment, itself, are printed in the Appendix at pp. 32A-35A.

## JURISDICTION

The judgment of the Connecticut Supreme Court was entered on August 11, 1981, (App. p. 2A ). A timely motion for reargument was denied on October 1, 1981. (App. p. 32A). The Connecticut Supreme Court, suo motu, amended its opinion on October 1, 1981. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (3).

## CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

### CONSTITUTIONAL

The Fifth Amendment to the Constitution of the United States provides, in pertinent part that "[N]o person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;..."

The Sixth Amendment to the Constitution of the United States provides, in pertinent part,

"[I]n all criminal prosecutions, the accused shall enjoy the right to a... public trial,...".

The Fourteenth Amendment (§ 1) to the Constitution of the United States provides, in pertinent part, "...; nor shall any State deprive any person of life, liberty or property without due process of law."

## STATUTORY

Former sections (Rev. to 1975) of the General Statutes of Connecticut provided, inter alia, as follows: § 53a-72 (a) (1). A male is guilty of rape in the first degree when he engages in sexual intercourse with a female by forcible compulsion; § 53a-75 (a) (1). A person is guilty of deviate sexual intercourse in the first degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse by forcible compulsion.

§53a-65. Definitions (2) "Deviate sexual intercourse" means (a) sexual contact between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis or the mouth and the vulva. (8) "Forcible compulsion" means physical force that overcomes earnest resistance; or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person,...".

## RULES

Rule 17.1 of this Court provides, in pertinent part, that "...[T]he following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered [for review on certiorari].

(b) When a state court of last resort has decided a federal question in conflict with another state court of last resort or of a federal court of appeals.

(c) When a state court...has decided an important question of federal law which has not been, but should be settled by this Court or has decided a federal question in a way in conflict with applicable decisions of this Court."

## STATEMENT OF THE CASE

### A.

### GENERAL DISCUSSION

Petitioner was charged in a thirteen count information with the commission of the following crimes: four counts of rape in the first degree, three counts of deviate sexual intercourse in the first degree, one count of burglary in the first degree, one count of larceny in the first degree and four counts of unlawful restraint in the first degree.[1] A jury returned guilty verdicts on all counts. As a result of the convictions, Petitioner received sentences which aggregated a minimum of 50 and a maximum of 104 years. Thereafter, through the Connecticut Sentence Review procedure, Petitioner's total effective sentence was reduced to a minimum of 30 and a maximum of 60 years.

On direct appeal, the Connecticut Supreme Court rejected all of Petitioner's claims of error. This petition suggests that two of Petitioner's claims are items worthy of consideration by this Court.

First is the claim that Petitioner's constitutional right to a public trial was violated when the trial judge, over Petitioner's objection, closed the courtroom after the complainant on the sexual crimes had been sworn as the State's ninth witness. The closure order was not requested by the State nor sought by the witness and was described by the Connecticut Supreme Court as

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(1) The pertinent statutory sections are noted in the opinion of the Connecticut Supreme Court App. p. 2A. The sections applicable to rape and deviate sexual intercourse are set forth, ante at 3 . The information is printed in the Appendix at p. 36A

"suo motu". Nor did the trial judge articulate any reasons for his action. By Petitioner's objection, this claim was preserved for further review. It was brought to the attention of the Connecticut Supreme Court in a supplemental brief written after this Court had decided Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed 2d 973 (1980) and the Connecticut Supreme Court had decided State v. Sheppard, 42 Conn. L.J. No.23 p.6(1980).

Second is the claim that the question of Petitioner's waiver of his right to remain silent was wrongfully decided. And, therefore, the admission into evidence of a recorded statement made during custodial interrogation violated Petitioner's constitutional privilege against self-incrimination. This claim also was preserved at the trial and was presented to the Connecticut Supreme Court in Petitioner's initial brief.

B.

DISCUSSION OF THE PUBLIC TRIAL CLAIM

When Petitioner's trial started on June 4, 1975, the trial judge ordered that all potential witnesses be sequestered from the courtroom at the request of both the Defendant and the State. Subsequently on June 11, 1975, the trial judge ordered the courtroom cleared of everyone, except court personnel, when the complaining witness for the sexual crimes, an adult woman, was sworn as the State's ninth witness. The order was not "in vacuo". Three spectators, then in the audience, left the courtroom after the order was announced.

Since no description of the factual circumstances of the closure order is provided by the opinion of the Connecticut Supreme Court, the

following account has been taken, verbatim, from the trial transcript (pp. 430-431).

"SALLY VAN RENSSELAER being a witness of lawful age and having been first duly sworn, testified on her oath as follows:

THE CLERK: Your name, please?

THE WITNESS: Sally Van Rensselaer.

THE CLERK: And your address?

THE WITNESS: 12 Pier Way Landing.

THE CLERK: Westport?

THE WITNESS: Westport.

THE CLERK: Thank you. You may be seated.

THE COURT: Sheriff, before we start, I want to clear the courtroom except for the court personnel.

MR. NAPLES (Public Defender): Your Honor, may the jury be excused for a minute?

THE COURT: All right, Sheriff, excuse the jury for a minute.

(Whereupon the jury retired to the jury room)

MR. NAPLES: Your Honor, my client has asked me why the courtroom has been cleared. And I did explain to him why, that this woman's testimony will probably be of a sexual nature. And that

the Judge, the Court, felt that it was unnecessary for anyone to be in the courtroom.

He then asked me whether or not this was an open courtroom, and I said it is an open courtroom. However, the judge has made a ruling that people should leave the courtroom for this particular testimony. And for that reason, he has instructed me to object to the courtroom being emptied, because it is an open courtroom with spectatorship allowed.

MR. BROWNE (State's Attorney): I think the record should reflect that there were three gentlemen that got up and left the courtroom. Other than that, there was nobody here. There were three gentlemen, none of whom had any connection with the proceedings, if your Honor please.

MR. NAPLES: Yes, So, for the record I am really requesting that the courtroom remain an open courtroom on behalf of my client.

THE COURT: What was that last thing you said?

MR. NAPLES: I am moving, your Honor, that the courtroom remain open.

THE COURT: Well, I will deny your motion that the courtroom remain open.

MR. NAPLES: Yes. I would like to take an exception to that.

THE COURT: An exception may be noted. [2]

According to the Connecticut Supreme Court, the "suo motu" closure ordered was sufficiently supported by the record althought the showing of the underlying factual basis for it lacked what was described as "preferred formality". App. pp. 23A, 33A. Noticeably absent from the opinion, however is any reference to recent discussions wherein this Court has discussed the relationship of the First, Sixth and Fourteenth Amendments to courtroom closing. E.g. Richmond Newspapers, Inc. v. Virginia, supra; Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979).

(2) At oral argument before the Connecticut Supreme Court, there was some dispute as to the nature of the proceeding where the trial judge announced that the courtroom would be cleared. Petitioner's supplemental brief (p.2) characterized the judge's action as "sua sponte". The State's supplemental brief (p.2) mentioned that the order was preceded by a conference in chambers. Both Mr. Naples and Mr. Browne were present at the oral argument. Mr. Naples stated that several conferences in chambers occurred during the course of the trial, but, he did not remember that one took place shortly before Mrs. Van Rensselaer was called to testify. Mr. Browne thought that there was aconference but he had no recollection of what may have been discussed at it. The trial judge had died during the pendency of the appeal. The Connecticut Supreme Court's treatment of the closure order as one made "suo motu" shows that the validity of the order was upheld without regard to any conference between the attorneys and the trial judge.

In Petitioner's supplementary brief, there was a quotation from the closing lines of the plurality opinion in Richmond Newspapers. "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." 448 U.S. at 581, 100 S. Ct. at 2830. Earlier, in a case where closure was sought by the prosecution, the Connecticut Supreme Court, in reliance on Richmond Newspapers, Inc. v. Virginia, had held that to deny the right of a public trial it was essential that some information be furnished to the [Trial] court to "demonstrate" a "compelling need". State v. Sheppard, supra.

The public trial issue in this case has two aspects. Do the closing lines of Richmond Newspapers, Inc. v. Virginia mandate a constitutional requirement of articulated findings for closure orders in Sixth as well as in First Amendment cases? Apparently, from its opinion in this case, the Connecticut Supreme Court did not think so. And, if an articulation of reasons is not required, was the closure order predicated on adequate, albeit unexpressed, factual bases?

The absence of articulated findings in this case caused the Connecticut Supreme Court to view four possible bases for the closure order. Only two of these bases, however, are definitively established by the record as having been known to the trial judge.

Certainly, the trial judge was aware of the information with its four counts of rape and three counts of deviate sexual intercourse. The allegations of the information had been read in the open courtroom at the start of the trial. App. p. 46A. But, the descriptions of the crimes in the information [and bill of particulars] were only in minimal statutory terms. App. pp. 36A-39A. In State v. Sheppard,

supra at 6, the Connecticut Supreme Court held that the State could not justify a request for a closed courtroom merely by reliance on the statutory elements of a sexual assault.

The only prior testimony, relevant to the closure order, came from the complainant's husband who testified as the State's second witness. While Mr. Van Rensselaer's testimony, as set forth in the opinion (App. p. 22A), was consistent with a claim that his wife had suffered some form of sexual molestation; it did not demonstrate that she would be unable to testify or that she would withhold or distort testimony if the courtroom remained open. As the opinion concedes, the transcript does not reveal any observation of her behavior before the courtroom was cleared or any hesitancy or distress while she was giving her testimony. App. pp. 22A, 33A.

To uphold the closing of the courtroom, the Connecticut Supreme Court felt compelled to go further and to place reliance on two additional items. One of these items, Petitioner's statement, was unknown to the trial judge at the time of his closure order. And, the trial judge's knowledge of the second item, the affidavit used to obtain a warrant for Petitioner's arrest, could be supplied only by presumption.

When first issued, the opinion of the Connecticut Supreme Court specifically mentioned the trial judge's awareness of Petitioner's insensitivity toward the complainant because of certain remarks contained in his recorded statement.[3] App. p. 22A. In Petitioner's

(3) The same statement that Petitioner, ante at 6, contends was admitted into evidence in violation of his privilege against self-incrimination. In the statement, App. pp. 51A-95A,

motion to reargue, attention was directed to the [undisputed] fact that the statement did not come into the case until sometime after the closure order had been issued and after Mrs. Van Rensselaer's testimony had been received in the closed courtroom. App. p. 26A.

The opinion, then, was amended to delete the trial judge's reliance on the statement. But, by an additional footnote in the amended opinion, the Connecticut Supreme Court held that, as an appellate court, it was not limited to the circumstances which existed when the closure order was announced. Rather, on a determination of both the propriety of the order and whether its issuance constituted reversible error, the Connecticut Supreme Court stated it could consider subsequent events such as Petitioner's statement and the victim's testimony. App. pp. 33A-34A.

Last, but not least, the Connecticut Supreme Court decided that it was entitled to presume, as a matter of law, that the judge who presided at the trial had taken judicial notice of the file including the contents of an affidavit which was attached to the application for a warrant for Petitioner's arrest. The affidavit had been filed four months earlier, on February 20, 1975, in response to Petitioner's discovery motion. [4] In the affidavit, the

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(3) Cont. - Petitioner denied the sexual offenses and admitted the other crimes or lesser versions of them.

(4) The date that the affidavit was filed and the reason for its presence in the file are not mentioned in the opinion of the Connecticut Supreme Court. This information appeared, however, in the State's supplemental brief (p. 5).

affiant, a detective, had reported the complainant's detailed account of the sexual offenses. App. pp. 41A-46A.

Petitioner's motion to reargue also questioned whether the requirement of "articulated findings", expressed in Richmond Newspapers, Inc. v. Virginia, supra at 581, 100 S.Ct. at 2830 could [ever] be satisfied by a presumed exercise of judicial notice. Moreover, and with due respect for the Connecticut Supreme Court, state law does not seem to provide a presumption that a trial judge takes judicial notice of [the contents of] a file when no request is made that he do so. No basis for the existence of such a presumption is furnished by Brockett v. Jensen, 154 Conn. 328, 336, 225 A.2d 190 (1966), the only supportive authority cited in the opinion below.

(5) Brockett v. Jensen, supra, involved judicial notice of judicial admissions in superseded and inconsistent pleadings. The decision holds that a trial judge may take judicial notice of superseded pleadings in the case before him and of pleadings in a related case which are inconsistent with the pleader's present position. Evident from the following language of the decision is that the exercise of judicial notice in Brockett v. Jensen was derived from a request and not from a presumption. "The admissions in a pleading must be taken in connection with the allegations thereof, and the weight to be given to admissions which are not in themselves conclusive against the pleader is to be determined by the court or jury the same as other evidence offered on the trial." 154 Conn. at 336.

C.

DISCUSSION OF THE WAIVER OF RIGHTS CLAIM

Petitioner when in custody at the Westport, Connecticut police station on November 17, 1974, initialed and signed a written waiver-of-rights form and answered questions in a surreptitiously recorded interview. Still, his second claim presents a troublesome question. Should Petitioner's written waiver of "Miranda" rights have been considered as voluntary in the sense of being intelligent and knowing when, on receipt of the "Miranda" warnings, he manifested a lack of understanding that oral answers could be used against him and his interrogators provided no further explanation. Both the waiver form and a transcript of the recorded interview have been reproduced in the Appendix.

Earlier in the day on November 17, 1974, the "Miranda" warnings had been read twice to Petitioner. The first reading occurred when Petitioner was apprehended soon after the offenses were reported and a second one a short while thereafter at the police station. Police witnesses testified that on both occasions Petitioner had said he was aware of his rights and had heard them before. The Connecticut Supreme Court found support for Petitioner's prior awareness in his record of previous convictions.[6]

(6) This Court is made aware of post-conviction findings by the trial judge on the hearing held to determine the admissibility of the recorded interview by which the word "before" is placed in proper perspective as it relates to Petitioner's prior awareness and previous convictions. The pertinent findings are: "81. The defendant had been convicted of felonies in Fairfield County in 1968, 197[illegible] and 1975 (These

Only at the interview, however, did Petitioner have an opportunity to express himself. On learning that Petitioner could not read, the principal interrogating officer recited the warnings and elicited the waivers. During this procedure, Petitioner's responses demonstrated not only a lack of understanding of the waivers but also an intention not to incriminate himself. As shown by the transcript of the recording (App. pp. 51A-56A), the police, at this juncture, did not correct but instead furthered Petitioner's misconceptions. A portion of the dialogue between Petitioner and the interrogating officer is set forth below.

[D] DETECTIVE D'AIUTO: You can't read that? O.K. I'll read them off to you---I have been advised that, right, I have the right, right to remain silent, can you initial that? If I talk to any police officer anything that I say can and will be used against me in Court, can you initial that?

[F] PETITIONER: I'm not saying that...

[D] DETECTIVE D'AIUTO: Huh?

[F] PETITIONER: Not that is I talked to any police officer.

[D] DETECTIVE D'AIUTO: No. No. No. You're just initialing the fact that this has been said, you know that this....that your [sic] have read that, you're not initialing, you're not signing that you said anything... you know what I mean...this is all I want you to sign.

[F] PETITIONER: Initial what?

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(6) Cont. - convictions) and in New Haven county in 1969. "82. The defendant could not recall being advised of his constitutional rights prior to November 17, 1974."

[D] DETECTIVE D'AIUTO: Put your initials right here, in other words stating...O.K. and then your initials on this one I have the right to consult with a lawyer before I answer questions and to have a lawyer with me during questioning, O.K.? I have the right to have a lawyer appointed for me if I cannot afford one before I, answer any questions, O.K. and that's that one there... I know that if I answer questions I have the right to stop answering at any time... and I may stop answering questions at any time if I wish to talk with a lawyer and may have him with me during further questioning, O.K., O.K. now, O.K. now you got... I am willing to answer questions and made [sic] a statement... I have these rights. I do not want a lawyer at this time and I understand what I am doing. I do this freely, and voluntarily. No threats or promises have been made to me, right?

[F] PETITIONER: Uh, this here, this here, this this here relates to a statement. I'm not gonna to write no, I'm not gonna give no sworn statement.

[D] DETECTIVE D'AIUTO: No. No. No. I know your [sic] not. All that this is is a waiver of your rights, so that, in the event you're gonna, you said you're going to to [sic] tell me what happened, isn't that right? I don't even want to know what happened unless you put it, unless you sign, sign here your legal signature.

[D] DETECTIVE D'AIUTO: O.K. Now, will you just tell me like you started before, from when your car, did your car run out of gas on Saugatuck Avenue, there?

As the interview progressed to establish Petitioner's culpability except for the sexual crimes, the police continued to foster his misconceptions. Illustrative are the two excerpts taken from separate portions of the transcript.

[S] LIEUTENANT SMITH: (App. pp. 63A-64A) Larry, would you give us a statement to what you just told us now?

[F] PETITIONER: No.

[S] LIEUTENANT SMITH: No way, huh?

[F] PETITIONER: No.

[S] LIEUTENANT SMITH: How come you're smiling? What you told us so far is the truth?

[F] PETITIONER: Yeah.

[S] LIEUTENANT SMITH: (App. p. 78A): You won't give us a statement, though, eh Larry?

[F] PETITIONER: No... I'm not going to put myself in, in a grave.

[S] LIEUTENANT SMITH: Well, you told us about it.

[D] DETECTIVE D'AIUTO: Well, I know. What's the difference, Larry?

[F] PETITIONER: The difference is it's not in ink.

[S] LIEUTENANT SMITH: Well, is there anything you want, we got you a cup of coffee coming in...you hungry?

The Connecticut Supreme Court determined that Petitioner's expressed refusals did not amount to an assertion of his constitutional right to remain silent. To that court, Petitioner's unwillingness to give a written statement was "quite understandable" in view of his inability to read. As a buttress for its conclusion, the Connecticut Supreme Court quoted from United States v. Cooper, (D.C. Cir. 1974), 499 F.2d 1060, 1062. "It is, we think a common experience of life that in many circumstances persons are willing to convey information orally but are reluctant to put the same thing in writing."

In Cooper, however, the quoted criterion was applied to the oral statements of a defendant who was described as a man of demonstrated intelligence who possessed a Bachelor of Science degree in mathematics and who had held responsible employment with the Federal Reserve Board. 499 F.2d at 1061. On the vital issue of whether Petitioner intelligently and knowingly waived his right to remain silent, the Connecticut Supreme Court applied the same standard to an illiterate whose schooling stopped after the fourth grade.

## REASONS FOR GRANTING THE WRIT

1.

### THE PROTECTIONS AFFORDED BY RICHMOND NEWSPAPERS INC. V. VIRGINIA SHOULD BE APPLIED TO AN ACCUSED'S SIXTH AMENDMENT PUBLIC TRIAL GUARANTEE.

In Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), this Court held that the First Amendment gives to the public a right to attend criminal trials and established a standard for the

governance of that right. "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." 448 U.S. at 581, 100 S.Ct. at 2830. The same standard should apply to a defendant's assertion of his Sixth Amendment public trial right; a right described by this Court as one personal to him. Gannett Co. Inc. v. DePasquale, 443 U. S. 368, 380-381 99 S.Ct. 2898, 2905-2906, 61 L.Ed.2d 608 (1979).[7]

A case with the posture of this one differs from most public trial claims recently entertained. Usually, the situation presented is a closure-seeking defendant and an antagonistic press acting as the representative of the public. In such an instance, the applicability of the "overriding interest articulated in findings" standard is evident from the Court's opinion in Richmond Newspapers. One of the concurring opinions (Stevens, J.) notes, however that it is the accused who has been identified by the Sixth Amendment as the party who has the greatest interest in a public trial. 448 U.S. at 584 n.2, 100 S.Ct. at 2831. Therefore, the same dual criteria should apply whenever a courtroom is closed over a defendant's objection.

(7) Compare Globe Newspaper Co. v. Superior Court (Mass 1980), 401 N.E.2d 360; judgment vacated and cause remanded, 448 U.S. ____, 101 S.Ct. 259, 66 L.Ed.2d 124 (1980); on remand 423 N.E.2d 773 (1981); cert. granted November 17, 1981. In the initial and remanded state proceedings, the Massachusetts Supreme Judicial Court held that the petitioner could not assert the Sixth Amendment right of the criminal defendant who had been acquitted. As reported in 30 Cr. L. 4090 (November 11, 1981), the question presented in the newly accepted petition asserts rights under the First, Sixth and Fourteenth Amendments.

A cogent reason for the review of this case stems initially from the disparity of age between the related public trial guarantees. The public's First Amendment right, with its stated protections, was articulated only last year by Richmond Newspapers, Inc. v. Virginia, a case which did not present the Court with an opportunity to define the circumstances in which all or parts of a criminal trial may be closed. 448 U.S. at 581 n.18, 100 S.Ct. at 2830. The contrary is true of the Sixth Amendment right. Through the years, several exceptions to it have become "enshrined" by legislative action, e.g., Globe Newspaper Co. v. Superior Court, supra or by judicial fiat.

The question is not whether a recognized exception to the Sixth Amendment right could satisfy the First Amendment test. The reference in Richmond Newspapers, supra at 581 n.18, 100 S.Ct. at 2830 to Wigmore's treatise shows that the Court considered the exceptions listed therein as sources for closure requests. The question which this Court is asked to review is one of analysis. Richmond Newspapers Inc. v. Virginia, requires a finding and articulation of facts. The Sixth Amendment cases permit exclusion by category.

Notable among the Sixth Amendment exceptions, and relevant here, is the closure which has been sanctioned for the testimony of the complaining witness in a sexual assault case. In its affirmance of the closure order issued at Petitioner's trial, the Connecticut Supreme Court placed reliance on its decision in State v. Purvis, 157 Conn. 198, 257 A.2d 178 (1968), cert. denied 395 U.S. 928, 89 S.Ct. 1788, 23 L.Ed.2d 246 (1969). The language used in Purvis, supra at 207, is typical. "Such a temporary exclusion of the general public is a frequent and accepted practice when the lurid details of such a crime must be related by a

young lady."

In the reverse situation, where the proponent of a closure order was a high school teacher accused of sexual contact with a student, the Supreme Court of Michigan in a decision which it described as "consistent with the result reached in Richmond" came to a different conclusion. "An accused who seeks closure has the heavy burden to show by a substantial probability that prejudicial error denying the accused a fair trial will result from proceeding in public." Detroit Free Press v. Recorder's Court Judge, 294 N.W.2d 827, 828, 837. (1980)

In summary, the closure order, at issue here, is justified only by categorical precedent which Petitioner submits is no longer sufficient in light of Richmond Newspapers, Inc., v. Virginia. Otherwise, the test prescribed by this Court in Richmond Newspapers cannot be met. A lack of overriding interest appears from the absence of any request that the courtroom be closed from the prosecutor or the witness and by the presence of only a minuscule number of spectators at the trial. The use of a presumption of judicial notice is the antithesis of articulated findings.8 What has been shown is an added detriment to the fairness of the trial by the issuance of the order in the presence of the jury. "A public trial is a necessary component of an accused's right to a fair trial." Gannett Co., Inc. v. DePasquale, supra at 99 S.Ct. at 2906 quoting from Estes v. Texas, 381 U.S. 532, 583, 85 S.Ct. 1628, 1653, 14 L.Ed.2d 543 (1965) (Warren, C.J. concurring).

(8) Due to the death of the trial judge, the presumption of judicial notice, as applied to this case, would be as conclusive in fact as the Connecticut Supreme Court stated it to be in law.

2.

A KNOWING AND INTELLIGENT WAIVER OF THE PRIVILEGE AGAINST SELF-INCRIMINATION WAS NOT ESTABLISHED BY PETITIONER'S RESPONSES WHICH MANIFESTED (1) A DESIRE NOT TO INCRIMINATE HIMSELF AND (2) AN IGNORANCE THAT INCRIMINATION COULD RESULT FROM ORAL INTERROGATION; WHEN PETITIONER'S MISCONCEPTION WAS FOSTERED BY THE POLICE.

To be effective, Petitioner's waiver had not only to be voluntary but also had to constitute a knowing and intelligent relinquishment of his privilege not to incriminate himself. These requirements, enunciated in Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938) were made applicable to custodial interrogations by Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602, 1628, 16 L.Ed.2d 694 (1966).

If after the required warnings are given, a custodial interrogation proceeds without an attorney, as it did in Petitioner's interview, a heavy burden rests on the State to demonstrate that Petitioner knowingly and willingly waived his privilege against self incrimination and his right to retained or appointed counsel. Miranda v. Arizona, supra at 475, 86 S.Ct. at 1628. In each case, the question depends upon the particular facts and circumstances surrounding that case including the background, experience and conduct of the accused. Edwards v. Arizona, ___ U.S., 101 S.Ct. 1880, 1884, 68 L.Ed.2d 378 (1981).

Petitioner's case merits review because it presents a situation which is the reverse of North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). Petitioner, here,

signed a waiver form, but, the validity of the written waiver is undermined by the (taped) dialogue between him and the police both when the form was executed and in the interrogation which took place immediately thereafter. Petitioner must take issue with the sentence in the opinion of the Connecticut Supreme Court that "[H]e claims no deficiency in the giving of the specified warning or in his comprehension of it." From other language in the opinion, it is clear that the dispute concerned Petitioner's comprehension.

A second question of whether the proper standards were used to test the character of Petitioner's waiver is suggested by the state court's reliance on United States v. Cooper, (D.C. Cir. 1974), 499 F.2d 1060 as authority. Aside from factual differences previously discussed, ante at 18, the opinion in Cooper, supra at 1062 recites that its disposition was governed by Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). The inapplicability of the "totality of circumstances" test involved in Schneckloth to Miranda situations is noted by Schneckloth, itself, 412 U.S. at 240-247, 93 S.Ct. at 2054-2058, by the dissent in Cooper, supra at 1068 and most recently by this Court in Edwards v. Arizona, supra at , 101 S.Ct. at 1884.

## CONCLUSION

For the reasons stated herein, this Court should issue a writ of certiorari to the Supreme Court of Connecticut.

Respectfully submitted

JERROLD H. BARNETT
Public Defender

BRUCE A. STURMAN
Assistant Public Defender

Office of the Chief
Public Defender
121 Elm Street
New Haven, Conn. 06510

(203) 789-7477

Counsel for Petitioner

NO. 81 5783

LARRY FRAZIER

VS.

STATE OF CONNECTICUT

IN THE SUPREME COURT

OF THE UNITED STATES

NOVEMBER 23, 1981

RECEIVED
NOV 28 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, the petitioner, Larry Frazier, respectfully moves for leave to proceed in forma pauperis.

At all stages of the trial and appellate proceedings in the State of Connecticut, the petitioner has been represented by an attorney or attorneys provided to him without cost by the State of Connecticut. Petitioner's affidavit in support of this motion is attached hereto.

BY Jerrold H Barnett

JERROLD H. BARNETT
Public Defender
121 Elm Street
New Haven, CT 06510
(203) 789-7477

Attorney for Petitioner

NO. _____

LARRY FRAZIER — IN THE SUPREME COURT

VS. — OF THE UNITED STATES

STATE OF CONNECTICUT — NOVEMBER 23, 1981

PETITIONERS AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

RECEIVED
NOV 28 1981
OFFICE OF THE CLERK
SUPREME COURT U.S.

STATE OF CONNECTICUT : ss Somers

COUNTY OF TOLLAND :

Larry Frazier being duly sworn on oath deposes and says:

1. I am the petitioner in the above entitled case and I am submitting this affidavit for use in support of my motion to proceed in forma pauperis in the Supreme Court of the United States.
2. At the present time I am incarcerated in the Connecticut Correctional Institution at Somers, Connecticut I have been incarcerated since the inception of the proceedings below which began in 1974 and therefore I have not been gainfully employed for many years.
3. I am a person of extremely limited means. Throughout the proceedings below, I qualified for representation by public defenders. My counsel at trial, on appeal and on my petition for a writ of certiorari are attorneys employed by the Division of Public Defender Services of the State of Connecticut.
4. In the proceedings below I was convicted of the following crimes.
   A. Rape in the first degree (4 counts) in violation of Connecticut General Statute [former] §53a-72(a)(1).
   B. Deviate sexual intercourse in the first degree (3 counts) in violation of Connecticut General Statute [former] §53a-75(1).

C. Burglary in the first degree in violation of Connecticut General Statute §53a-101(a)(1).

D. Larceny in the first degree in violation of Connecticut General Statute §53a-119 and 53a-122(a)(2).

E. Unlawful restraint in the first degree (4 counts) in violation of Connecticut General Statute §53a-95(a).

5. On the aforesaid convictions I received a total effective sentence of 52-104 years which subsequently was reduced through the Connecticut Sentence Review procedure to not less than 30 nor more than 60 years.

6. On my direct appeal to the Connecticut Supreme Court, I contended, inter alia, that the closing of the courtroom during a portion of my trial was a violation of my constitutional right to a public trial, and that on erroneous ruling that I intelligently and knowlingly waived my right to remain silent resulted in a violation of my privilege against self - incrimination.

7. The Connecticut Supreme Court disagreed with my contentions and affirmed my convictions.

8. In my petition for certiorari I claim that the Connecticut Supreme Court erred when it decided my constitutional claims.

9. At present I have no accounts in savings or commercial banks.

10. I believe that I am entitled to redress and that my petition is based on a valid claim of constitutional error.

11. This affidavit is made in good faith.

Larry Frazier

LARRY FRAZIER, #
Petitioner

Subscribed and sworn to before me this 23rd day of November, 1981.

Jerrold H Barnett

JERROLD H. BARNETT
Commissioner of the
Superior Court of the
State of Connecticut

SUPREME COURT OF THE UNITED STATES

NO. _____

LARRY FRAZIER VS. STATE OF CONNECTICUT

CERTIFICATION

I hereby certify that the foregoing Motion and Affidavit have been mailed to Attorney Donald A. Browne, State's Attorney, 1061 Main Street, Bridgeport, Connecticut 06604, counsel for the respondent, on November 14, 1981.

Jerrold H Barnett

JERROLD H. BARNETT
Public Defender
121 Elm Street
New Haven, CT 06510
(203) 789-7477

# Appendix

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SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1981

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NO.
81-5183

LARRY FRAZIER,
Petitioner,

V.

STATE OF CONNECTICUT,
Respondent,

---

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

---

JERROLD H. BARNETT
Public Defender
121 Elm Street
New Haven, Conn. 06510

BRUCE A. STURMAN
Ass't Public Defender
121 Elm Street
New Haven, Conn. 06510

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STATE OF CONNECTICUT V. LARRY FRAZIER

SPEZIALE, PARSKEY, SHEA,

ASPELL AND HENNESSY, Js.

Argued May 5 - decision released

August 11, 1981

Information charging the defendant with four counts of rape in the first degree, three counts of deviate sexual intercourse in the first degree, burglary in the first degree, larceny in the first degree and four counts of unlawful restraint in the first degree, brought to the Superior Court in the judicial district of Fairfield at Bridgeport and tried to the jury before McGrath, J.; verdict and judgment of guilty, and appeal by the defendant to this court. No error.

Jerrold H. Barnett, public defender, with whom was Clement F. Naples, deputy chief public defender, for the appellant (defendant).

Donald A. Browne, state's attorney, for the appellee (state).

SHEA, J. The defendant was found guilty by a jury on all counts of a thirteen-count information charging him with rape in the first degree (four counts) in violation of General Statutes §53a-72 (a) (1);[1] deviate sexual intercourse in the first degree (three counts) in violation of General Statutes §53a-75 (a) (1);[2]

(1) General Statutes §53a-72 was repealed by Public Acts 1975, No. 75-619 §7.

(2) General Statutes §53a-75 was repealed by Public Acts 1975, No. 75-619 §7.

burglary in the first degree (one count) in violation of General Statutes §53a-101 (a) (1); larceny in the first degree (one count) in violation of General Statutes §53a-119 and §53a-122 (a) (2); and unlawful restraint in the first degree (four counts) in violation of General Statutes §53a-95 (a). In his appeal from the judgment of conviction the defendant raised four issues in his original brief: (1) whether his rights of trial by jury and of equal protection of the laws were infringed because the array of prospective jurors available for selection of the trial jury was allegedly not composed of a fair cross-section of the community; (2) whether certain statements of the defendant admitted in evidence were obtained in violation of the principles of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); (3) whether the court should have given a curative instruction or followed some other procedure to minimize the possible prejudice which may have been caused by an objectionable question asked by the prosecutor; and (4) whether some of the crimes charged in the information, which all arose out of the same incident, were merged. The defendant also raised a fifth issue in a supplemental brief which he filed, whether his right to a fair and public trial was violated by the order of the court excluding the public during the testimony of the victim of the sexual assaults.

The defendant does not question the sufficiency of the evidence to support the guilty verdicts. Our summary of the facts relating to the commission of the crimes which the jury might reasonably have found is abbreviated accordingly.

On Sunday, November 17, 1974, at about 11 a.m. the victim of the sexual assaults, her husband and their two young children returned to their home in Westport after attending

church services. When the family entered the kitchen they were confronted by the defendant who was pointing a rifle at them. He directed the four members of the family to lie face down on the kitchen floor and caused their hands to be tied behind their backs. He removed the wallet of the husband from a pocket of his pants. Threatening the others not to move, he ordered the wife to go with him to an upstairs bedroom. There he committed various sexual assaults upon her as charged in the information. The defendant then went downstairs to the kitchen where he proceeded to place the two young children inside a kitchen closet. He returned to the bedroom upstairs and again sexually assaulted the wife. After binding her hands and feet once more, he went back to the kitchen and requested the keys of the car from the husband. The defendant then started the automobile, but he returned to the house and attempted to place a telephone call. He also proceeded to take various items from the dining and living rooms, filling a pillow case with some of the objects and placing it on the kitchen floor. He again went upstairs to the bedroom and committed another series of sexual assaults upon the victim. He also removed from her person two rings and a necklace. He returned to the kitchen where he picked up the pillow case and proceeded to leave the driveway in the car belonging to the family.

The husband was able to free himself soon after the defendant left. He untied his wife and children and then called the police. A Westport police officer who was sent in response to the call observed a man, whose description corresponded to that he had received, just starting to drive a car away from the curb of a street near the home of the complainant. When the officer followed, the other vehicle turned into a driveway and the defendant got out and started to run. The officer pursued him across

several properties along the shoreline until the defendant entered the water, where he remained until other police officers arrived and took him into custody.

A blue suit jacket belonging to the husband, which the defendant wore as he exited the car but discarded during the chase, was retrieved. A gasoline can taken from the residence was found in the car he had been seen operating. The family automobile, containing numerous items taken from the house, was found abandoned about one-tenth of a mile from where the officer had observed the defendant starting to drive his car away from the curb.

I

On the morning assigned for the commencement of the selection of the trial jury a new group of jurors was scheduled to begin service at the Fairfield County courthouse in Bridgeport. Of those summoned, many of whom were excused without coming to the courthouse for medical reasons, 189 appeared and went through the usual indoctrination procedure. An additional 77 persons were excused during this process, leaving 112 potential jurors available for service in criminal trials.

The defendant's attorney, after observing the group of jurors available for service, raised a claim that the small number of black persons he saw was an indication of discrimination which would be prejudicial to the defendant, a black man. The trial judge allowed the defendant some time to investigate the matter further.

The next day the defendant filed a motion to "quash and/or strike the jury panel" on the ground that there had been systematic exclusion

of black people from "the list of prospective jurors from which the present panel was drawn" in violation of his rights to equal protection and due process of law under the federal and state constitutions. A hearing was held upon the motion at which the jury clerk testified that, of the 112 prospective jurors available for criminal trials, seven or 6.28 percent appeared to be black. Copies of the 1970 census data for each municipality in Fairfield County were also submitted. From these exhibits the trial court made certain findings by arithmetical computation but failed to make others which the defendant sought in his draft finding.[3] We need not discuss the corrections in the finding which the defendant requests in this appeal because he does not claim that the slight difference between the 6.28 percent representation of blacks on the jury array available for the trial of his case and the 7.1 percent black composition of Fairfield County, as found by the trial court, has any significance.

Except for inferences which the defendant seeks to draw from the statistical data, there is no evidence of purposeful discrimination on the part of officials in charge of compiling the jury list or summoning those selected. The defendant claims to have made out a prima facie case of a violation of the requirement that juries be drawn from a fair cross-section of the community in accordance with the standards established for statistical proof of such a claim in Duren v. Missouri, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979). "In order to

(3) This appeal was filed on August 5, 1976 and the finding was filed on December 19, 1978. The applicable rules of appellate procedure are those in effect prior to July 1, 1979 when the draft finding and the post-decision finding were eliminated. Practice Book §3166.

establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this under-representation is due to systematic exclusion of the group in the jury-selection process." Id., 364.

It cannot be doubted that the first of these criteria has been fulfilled. Black people are a classic example of a "distinctive" group as has been held for more than a century. Strauder v. West Virginia, 100 U.S. 303, 305, 25 L. Ed. 664 (1880); see Hernandez v. Texas, 347 U.S. 475, 477-480, 74 S. Ct. 667, 98 L. Ed. 866 (1954).

The defendant appears to recognize that his challenge to the jury array founders on the second requirement, that the defendant show a significant disparity in the proportion of blacks on the panel under scrutiny as compared to the general population of Fairfield County. Attributing no significance to the .85 percent differential between these percentages, the defendant now seeks to eliminate from the computation those towns in which black people form only a minuscule portion of the population. In effect, he claims that a black defendant is entitled to a jury array drawn from only those municipalities which have a substantial black population. This claim was not raised at trial but, since it has constitutional ramifications and the census data upon which it is based is not disputed, we may consider it. State v. Evans, 165 Conn. 61, 69-70, 327 A.2d 576 (1973). "From time immemorial in this state, the community unit which is the basis for the source of a jury array is that of a county, in this

instance, Fairfield County." State v. Townsend, 167 Conn. 539, 551, 356 A.2d 125 (1975). We are not aware of any authority holding that some narrower political unit where particular minorities might have greater proportionate strength must be used as the "community" to which the fair cross-section standard should be applied. It is not claimed that there has been any manipulation of political boundaries designed to minimize the representation of black people on juries. See White v. Regester, 412 U.S. 755, 765-770, 93 S. Ct. 2332, 37 L. Ed. 2d 314 (1973). Absent such an invidious purpose, there can be no violation of the equal protection clause simply because the viewpoint of a particular group might find more effective expression if the political unit used as the source of a jury array were differently constituted. Mobile v. Bolden, 446 U.S. 55, 70-71, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980).

We need discuss the third requirement of a "systematic" exclusion of the particular group only to observe that the defendant's presentation, which was based only upon the composition of a single jury array available for service for the ensuing four weeks, would hardly establish that any disproportion, even if significant, was systematic. See Duren v. Missouri, supra, 366.

We conclude that the defendant has failed to prove a prima facie violation of the fair cross-section requirement with respect to the array from which the trial jury was selected in accordance with the standards established in Duren v. Missouri, supra, 364. Aside from the statistical data, which we find deficient, there is no evidence of actual discriminatory intent, which might otherwise support his claim of violation of his right to equal protection. Cassell v. Texas, 339 U.S. 282, 286-90, 70 S. Ct. 629, 94 L. Ed. 839 (1950).

II

In claiming that certain inculpatory statements made to the police officers were improperly admitted into evidence at the trial because of the failure to comply with Miranda v. Arizona, supra, the defendant focuses mainly upon the requirement of an effective waiver of his constitutional rights prior to questioning. He claims no deficiency in the giving of the specified warning or in his comprehension of it. See State v. Wilson, Conn. (42 Conn. L.J., No. 37, pp. 1, 3 n.6) (1981). "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests upon the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Miranda v. Arizona, supra, 475. The issue is factual, but our usual deference to the finding of the trial court on questions of this nature is qualified by the necessity for a scrupulous examination of the record to ascertain whether such a finding is supported by substantial evidence. Culombe v. Connecticut, 367 U.S. 568, 605, 81 S. Ct. 1860, 6 L. Ed. 2d 1037 (1961).

There can be little dispute about the circumstances leading to the incriminating statements of the defendant which were admitted in evidence. Most of what transpired was tape recorded, unbeknownst to the defendant. The remainder appears to be uncontradicted. The trial court's finding omitted many of the requests[4] in the defendant's draft finding which are supported by the transcript of the tape.

(4) Most of these requests were properly omitted as mere recitals of testimony. A finding was never intended to be a regurgitation of the transcript. Practice Book, 1963, §612C.

In our consideration of this appeal the defendant has been given the benefit of these omissions.

At the time the defendant was captured near the beach in Saugatuck a Westport police officer advised him of his constitutional rights by reading a card which he carried containing the familiar Miranda warning. The defendant said he was aware of his rights and had heard them before, a statement supported by his later testimony during the hearing on the admissibility of his conversation with police that he had been convicted of several felony offenses in the period 1968-1975. When the defendant was taken to the Westport police station, another officer again read the Miranda warning to him. The defendant responded that he understood his rights and had been advised of them before. He was then formally arrested and charged with robbery and rape.

The defendant was brought upstairs to a room in the detective bureau. He was allowed to remove his handcuffs and wet clothes and was given some dry coveralls to wear. A tape recorder in the room had been placed in operation just before the defendant's entrance, a circumstance of which the defendant was unaware. Two detectives, Smith and D'Aiuto, sat at the rear of a desk and the defendant sat in front. The police chief sat at another desk in the room.

The defendant was permitted to make a telephone call to his home prior to any questioning. The tape recorder picked up his part of the conversation with a member of his family, presumably his sister.[5] Although the transcript of this portion of the tape is not entirely coherent, the defendant indicated that the West-

(5) The defendant addressed the person he spoke to on the telephone as "Sissy."

port police were holding him for robbery and other charges and were trying to accuse him of rape; that he had been using his mother's car, which the police had in their possession; that any bond would be extremely high; that the police wanted him to confess and he had nothing to lose; and that he wanted to see that the car was returned to his mother. He asked for some clothes to be brought to him and that his mother be told he was sorry. He concluded the conversation by saying, "...yea, but you ain't ashamed but you ain't got to do the time that I gots to do...I'm the one that's gonna feel bad."

After the telephone conversation, detective D'Aiuto asked the defendant if he wanted to tell what happened and to start with his car stopping on the road. The defendant responded, "Uh, my car stopped...uh...I ain't signing no statements." The officer then told him that if he did not want to sign a statement he would not have to sign a statement, and he inquired whether the defendant had been read his rights at the scene. The defendant replied affirmatively but said that he had not signed the back of the card given to him by the officer. He was then asked to sign a waiver form, the Miranda warning contained thereon being read to him and the paper being handed to him to read and fill out. When the defendant said he could not read, officer D'Aiuto began to read aloud each part of the warning, requesting the defendant to initial the blank space provided on the form after each of the warning paragraphs.

After he heard the paragraph read stating that if he talked to any police officer anything that he said could and would be used against him and was requested to initial it, the defendant said "I'm not saying that...not that is I talked to any police officer." D'Aiuto then explained that by initialing this paragraph the defendant would not be indicating

that he had said anything but merely that the paragraph had been read to him. The defendant then initialed the paragraph and continued to initial the remaining paragraphs of the form as they were read to him.

The last paragraph of the form was an addition to the standard warning requirements of Miranda, and it stated: "I am willing to answer questions and make a statement knowing that I have these rights. I do not want a lawyer at this time. I know and understand what I am doing. I do this freely and voluntarily, and no threats or promises have been made to me." When this paragraph was read to him the defendant said, "Uh, this here...relates to a statement. I'm not gonna to write no, I'm not gonna give no sworn statement." D'Aiuto replied, "No. No. No. I know you're not. All that this is is a waiver of your rights, so that, in the event you're gonna, you said you're going to tell me what happened, isn't that right? I don't even want to know what happened unless you put it, unless you sign, sign here your legal signature." The defendant did initial this paragraph and also signed his name on another line just below. Beneath that part of the form was a blank space headed by the word "statement" in which nothing appears.

The tape indicates that as soon as the waiver form had been initialed and signed by the defendant, officer D'Aiuto began to question the defendant.

The defendant readily admitted that he had taken his mother's car without permission, that it had run out of gas on Saugatuck Avenue in Westport, and that he decided than to burglarize a house which he came upon not very far from where he had parked the car. The family came home while he was so engaged. He pretended to have a weapon when they found him in the house.

He said he had tied them up, leaving the man in the kitchen, putting the children in the closet, and bringi g the woman to the bedroom upstairs. He denied any sexual advances of any kind and also denied possession of any weapon. He admitted taking the car which he had loaded with various items found in the house, and also the gas can, which he had used to replenish the tank of the car he had been driving. Before the conversation was concluded he discovered that the tape recorder was in operation, at which point he said he had made up the whole story of his involvement. The entire recording on the tape took fifty-seven minutes.

Although the defendant in his brief alludes to the tactic used by the police of recording their interview with him without his knowledge, he does not challenge the legality of this practice which has often received judicial sanction. Lopez v. United States, 373 U.S. 427, 439, 83 S. Ct. 1381, 10 L. Ed. 2d 462 (1963); Lee v. Wilson, 363 F.2d 824 (9th Cir. 1966); State v. Lorain, 141 Conn. 694, 700-701, 109 A.2d 504 (1954).

The defendant first points to some discrepancies between the tape recording of the conversation and the testimony of some of the police officers concerning their recollection of it, claiming that these inconsistencies flaw their testimony. Detectives D'Aiuto and Smith before the tape was played said they did not think the defendant had told them he was illiterate as the tape recording demonstrates he did. These misstatements on their part were not prejudicial to the defendant, however, because the trial court found that the defendant had informed the officers that he could not read.

The defendant relies mainly upon his claim that some of his responses during the conversation about the waiver indicated that he did not want to be questioned and that the police,

therefore, should have discontinued the interview. "Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." Miranda v. Arizona, supra, 445. "There can be no doubt that, if the accused indicates in some way that he wishes questioning to cease, the interrogation must end." State v. Cobbs, 164 Conn. 402, 418, 324 A.2d 234, cert. denied, 414 U.S. 861, 94 S. Ct. 77, 38 L. Ed. 2d 112 (1973). The defendant refers to his remark at the start of the interview before the waiver form was read to him that "I ain't signing no statements." Another declaration: "I'm not saying that...not that is I talked to any police officer," which followed a request to initial the warning paragraph, beginning: "If I talk to any police officer,..." is also mentioned, but this portion of the colloquy indicated simply a misunderstanding on the part of the defendant of the significance of that paragraph, which the officer then proceeded to clarify in an appropriate manner. He also relies upon his response after the express waiver paragraph of the form was read to him that he was not going to write or give any sworn statement. We think a fair interpretation of these comments of the defendant is that he was refusing to make any written statement concerning the crimes but that he had no reluctance to discuss them orally with the officers, at least until his discovery of the tape recorder. His telephone conversation with his sister prior to any questions indicates some desire on his part to cooperate with the police for the purpose of obtaining the release of his mother's car from police custody[6] and his

(6) The defendant made no claim that the police made promises of any kind to him. He did say that they threatened to kill him and abused him physically. The decision of the trier against the defendant on this issue is adequately supported by the evidence, however, and no claim to the contrary has been raised in this appeal.

realization that he had nothing to lose in view of the overwhelming evidence against him with respect to some of the charges.

It has frequently been held that a refusal to give a written statement does not amount to an assertion of the constitutional right to remain silent. United States v. Cooper, 499 F.2d 1060, 1062 (D.C. Cir. 1974); Pettyjohn v. United States, 419 F.2d 651, 655 (D.C. Cir. 1969), cert. denied, 397 U.S. 1058, 90 S. Ct. 1383, 25 L. Ed. 2d 676 (1970). "It is, we think, a common experience of life that in many circumstances persons are willing to convey information orally but are reluctant to put the same thing in writing." United States v. Cooper, supra. This defendant's unwillingness to give a written statement is quite understandable in view of his inability to read.

Even if the defendant's remarks were to be construed as a negation of his act of initialing the express waiver paragraph of the form, it is clear that an express waiver, either oral or written, is not essential. North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979). "The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case." Id. Although mere silence after a warning of rights is not enough, "[t]hat does not mean that the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights." Id. The federal courts have unanimously rejected the claim that refusal to sign a written waiver form precludes a finding of waiver. Id., 375 n.5; United States v. Boston, 508 F.2d 1171, 1175 (2d Cir. 1974).

The only other circumstances mentioned by

the defendant as militating against an effective waiver are his lack of schooling beyond the fourth grade and his illiteracy. Outweighing these considerations, however, are his extensive prior involvement in the criminal justice system, his excellent comprehension of the questions asked of him and insistence upon clarification of them, his reasonably articulate responses, and his artfulness in denying the more reprehensible acts charged against him, as evidenced by the tape recording. The great weight of the evidence shows no indication of overbearing police conduct, physical or psychological, which could reasonably be deemed coercive. We conclude that the trial court's finding of an effective waiver is adequately supported by the evidence.

III

The defendant claims as error the failure of the court to give a curative instruction to the jury at a point in the trial where the prosecutor asked a question of a witness which obviously called for a hearsay answer. The victim of the sexual assaults testified that she had heard the defendant whisper a certain telephone number as he attempted to make a call from the phone located in her bedroom. A Bridgeport police officer testified that he had gone to the home of the person listed as the holder of that telephone number and that he spoke to a girl who answered the door and asked whether she or her mother knew the defendant. When the incident occurred at the trial the defendant objected promptly and the prosecutor withdrew the question before it was answered. The court then excused the jury and the defendant moved for a mistrial, the striking of the testimony of the witness, and an instruction to the jury to disregard the question and not to speculate about a possible answer. Upon this

appeal the defendant apparently recognizes that the situation did not warrant anything more than a curative instruction. The motion to strike was inappropriate because the witness never answered the question and part of his testimony was relevant to show that the state had investigated this clue. A mistrial should be granted only where the occurrence at trial is of such a nature that a fair trial is seriously and irreparably jeopardized. State v. Hawthorne, 176 Conn. 367, 372, 407 A.2d 1001 (1978).

We agree with the defendant that it is unprofessional for a prosecutor knowingly to ask a legally objectionable question for the purpose of bringing inadmissible matters to the attention of the jury. ABA Standards Relating to the Administration of Criminal Justice, The Prosecution Function §5.6 (b) (1974 Ed.); Code of Professional Responsibility, EC No. 7-25. In order to avoid the unfavorable inference which might otherwise be drawn it is proper for the state to show that reasonable efforts have been made to discover pertinent information. The rules of evidence must, nevertheless, be followed despite the difficulties which may arise. On the other hand, the prosecutor was not obliged to call as his own witness the declarant referred to by the officer since he might then be held to have "vouched" for her credibility. State v. Mitchell, 169 Conn. 161, 164, 362 A.2d 808 (1975). Although the defendant contends that the jury must inevitably have concluded from his objection that the response of the girl to the police officer would indicate that she knew the defendant, the opposite inference might well have been drawn from the failure of the state to call her as a witness.

In any event, the court did include in the charge to the jury a general instruction to disregard offered evidence which was not admitted because of an objection. Although it may have

been preferable to give such an instruction at the time of the occurrence; see State v. Daniels, 180 Conn. 101, 111-12 n.10, 429 A.2d 813 (1980); the court in its discretion may have decided that to do so would highlight its importance and encourage the very speculation to be avoided. We can find no abuse of discretion in the refusal to give a corrective instruction at the time of the incident rather than in the final charge.

IV

The defendant requested a charge to the jury that "only a single offense of rape is committed when an individual has several acts of sexual intercourse with the victim in a short period of time." A similar claim that the various sexual acts were merged was also made in a motion to dismiss several counts of the information at the close of the state's evidence and in a motion for a directed verdict.[7]

The defendant relies upon several Oklahoma cases which contain dicta to the effect that several acts of intercourse with the same victim during a period of time as brief as that involved here may be treated as a single act of rape. Klinekole v. State, 572 P.2d 994, 998 (Okla. Crim. App. 1977); Turnbow v. State, 454 P.2d 674, 675 (Okla. Crim. App. 1969); Turnbow v. State, 451 P.2d 387, 389 (Okla. Crim. App. 1969). These cases hold merely that where evidence of several acts of intercourse is offered in support of a single charge of rape they may

(7) This case was tried prior to the adoption of the rules of criminal procedure effective on July 1, 1978, which substituted for the motion to dismiss and the motion for a directed verdict, when used in the course of a trial, the motion for judgment of acquittal. Practice Book, 1978, §883.

sometimes be regarded as one continuous act for the purpose of a motion requiring the prosecutor to specify upon which act he relies for a conviction. The doctrine would not be applicable to an information making each act relied upon a separate count as in this case. The Oklahoma courts recognize that rape is not a continuous offense. Cody v. State, 361 P.2d 307, 320 (Okla. Crim. App. 1961). There is ample authority holding that each separate act of forcible sexual intercourse constitutes a separate crime. 1 Wharton, Criminal Law & Procedure (1957) §304; 65 Am. Jur. 2d, Rape §106. A different view would allow a person who has committed one sexual assault upon a victim to commit with impunity many other such acts during the same encounter.

The classic test of multiplicity is whether the legislative intent is to punish individual acts separately or to punish only the course of action which they constitute. Blockburger v. United States, 284 U.S. 299, 302, 52 S. Ct. 180, 76 L. Ed. 2d 306 (1932); State v. Cimino, 33 Conn. Sup. 680, 684-85, 366 A.2d 1168 (1976). In this case each assault upon the victim involved a separate act of will on the part of the defendant and a separate indignity upon the victim. Under these circumstances we believe the legislative intention was that each assault should be deemed an additional offense.

V

In a supplemental brief the defendant makes a final claim of error that his constitutional right to a public trial was violated when the court, suo motu, ordered that the courtroom be cleared of spectators during the testimony of the victim of the sexual assaults. The defendant did make a timely objection which the court overruled. The record indicates that only three

male spectators unconnected with the case[8] were excluded from the courtroom as a result of the order.

It is unquestionable that the right to a public trial is guaranteed by our federal[9] and state[10] constitutions in all criminal prosecutions. We recognize, however, that "[a]n accommodation must sometimes be made between the individual's right to a public trial and other societal interests that might justify closing the courtroom to the public." State v. Sheppard, Conn. (42 Conn. L.J., No. 23, pp. 6, 7) (1980). We have indicated that closure of a courtroom should be limited to those situations where such action is "demonstrably necessary to further the administration of justice." Id. to the same purport is Practice Book §895 which authorizes closure "when there is a substantial likelihood that the presence of the public... would unduly inhibit any testimony...."

Temporary exclusion of the general public from the courtroom has been a frequent practice during the testimony of the victim of a particularly revolting rape. State v. Purvis, 157 Conn. 198, 207, 251 A.2d 178 (1968), cert. denied, 395 U.S. 928, 89 S. Ct. 1788, 23 L. Ed. 2d

(8) The court at the start of the trial had ordered that all potential witnesses be sequestered at the request of both the defendant and the state. See General Statutes §54-85a.

(9) Article VI of the amendments to the constitution of the United States provides, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...."

(10) Article first, section 8 of the constitution of Connecticut provides, ir part: "In all criminal prosecutions, the accused shall have a right...to a speedy, publ c trial...."

246 (1969); State v. Gionfriddo, 154 Conn. 90, 93, 221 A.2d 851 (1966). "[A] demonstrated need to protect a witness from a substantial threat of indignity that might induce reluctance to testify about a lurid or heinous sexual assault" has been cited as a classic situation where closure would be appropriate. State v. Sheppard, supra; United States ex rel Latimore v. Sielaff, 561 F.2d 691, 694 (7th Cir. 1977), cert. denied, 434 U.S. 1076, 98 S. Ct. 1266, 55 L. Ed. 2d 782 (1978); Harris v. Stephens, 361 F.2d 888, 891 (8th Cir. 1966), cert. denied, 386 U.S. 964, 87 S. Ct. 1040, 18 L. Ed. 2d 113 (1967).

The defendant does not quarrel with these principles but with their application in this case. He claims that the record fails to show any reasonable basis for the closure order at the time it was entered. It is essential that some information be furnished to the court "to demonstrate a compelling need" to deny the right of public trial. State v. Sheppard, supra, 8. At the time of entering the closure order, the court had before it the information which included four counts of rape in the first degree by engaging in sexual intercourse with the victim by forcible compulsion and three counts of deviate sexual intercourse in the first degree by forcible compulsion. The definition of "deviate sexual intercuurse" contained in General Statutes §53a-65[11] was some indication that the testimony of the victim was likely to be "lurid" and "revolting." In addition we may presume

(11) General Statutes 1975 §53a-65(2) (repealed by Public Acts 1975, No. 75-619 §1) defines "deviate sexual intercourse" to mean "(a) sexual contact between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva, or (b) any form of sexual contact with an animal or dead body."

that the court took judicial notice of the file; Brockett v. Jensen, 154 Conn. 328, 336, 225 A. 2d 190 (1966); which contained an affidavit of the investigating police officer attached to the bench warrant application which gave the victim's detailed account of the evidence supporting the charges and the heinous circumstances under which they were committed. Brockett v. Jensen, supra. Prior to the victim's appearance on the stand and any observations of her demeanor which may have influenced the court, her husband testified that as he lay bound on the kitchen floor he heard his wife crying and gasping in the bedroom upstairs while the defendant was assaulting her. He also said that he found her to be "very, very upset" when he went upstairs after he had freed himself and his two children soon after the defendant had departed. Another indication of the sensitivity of the victim which had come to the attention of the court was a comment of the defendant contained in the tape recording of his interview at the police station. When he was told of the likelihood of a rape charge, after he had confessed to the burglary and larceny crimes, he mentioned that the woman might be "neurotic" or "crazy" and that he thought she was an alien. Referring again to the rape charge he continued, "It's gonna cause her just as much misery and grief as it's gonna cause me, I mean, appearing in court, you know...." It appears that it was the defendant himself who, when told by his counsel that the courtroom was being cleared because the victim's testimony would probably be of a sexual nature, insisted that the courtroom remain open. Although the transcript does not reveal the hesitation or distress which the victim endured during her testimony describing the various iniignities to which she was subjected, defense counsel on two occasions was moved to comment that it was a "difficult situation" for her.

Although the showing of the factual basis wiich led the court to order closure lacks some of the formality we would prefer, we think the record sufficiently supports the action of the trial court. There is far more here than a simple charge of rape, where the principal issue was whether the victim had consented, which we found insufficient to support exclusion of the public in State v. Sheppard, supra. The basis for this order of the trial court compares favorably with that in many other cases in which closure has been approved under similar circumstances. United States ex rel. Latimore v. Sielaff, 561 F.2d 691, 694 (7th Cir. 1977), cert. denied, 434 U.S. 1076, 98 S. Ct. 1266, 55 L. Ed. 2d 782 (1978); Harris v. Stephens, 361 F.2d 888, 891 (8th Cir. 1966), cert. denied, 386 U.S. 964, 87 S. Ct. 1040, 18 L. Ed. 2d 113 (1967); State v. Purvis, 157 Conn. 198, 207, 251 A.2d 178 (1968), cert. denied, 395 U.S. 928, 89 S. Ct. 1788, 23 L. Ed. 2d 246 (1969); State v. Santos, R.I. , 413 A.2d 58, 63-64 (1980); People v. Latimore, 33 Ill. App. 3d 812, 818-19, 342 N.E.2d 209 (1975); State v. Smith, 123 Ariz. 243, 249-50, 599 P.2d 199 (1979); State v. Padilla, 91 N.M. 800, 802-803, 581 P. 2d 1295 (1978); Price v. State (Tex. Crim. App.) 496 S.W.2d 103, 108 (1973); Bivins v. State, (Fla. App.) 313 So. 2d 471, 472 (1975); Commonwealth v. Stevens, 237 Pa. Super. 457, 466-68, 352 A.2d 509 (1975).

There is no error.

In this opinion the other judges concurred.

NO. 8342

STATE OF CONNECTICUT SUPREME COURT

VS. JUDICIAL DISTRICT OF FAIRFIELD

LARRY FRAZIER AUGUST 13, 1981

DEFENDANT'S MOTION TO REARGUE

Pursuant to Practice Book §3111 et seq, the defendant moves to reargue the following aspects of this Court's opinion:

1. The decision that the trial judge's suo motu closure order was not violative of the defendant's constitutional right to a public trial.

2. The decision that the manner in which the defendant's waiver and statement were obtained did not violate his constitutional rights as established by Miranda v. Arizona, 384 U.S. 486.

3. The decision that the panel from which the defendant's jury was drawn satisfied the constitutional requirements of a fair cross section and equal protection of the laws.

The grounds for requesting reargument are as follows:

I

Closure Order And Right Of Public Trial

Reargument should be had so that this Court may articulate its views on how the closure order in this case satisfied the requirements set forth in Richmond Newspapers, Inc. v. Virginia, ___ U.S. ___, 100 S.Ct. 2814, 65 L. Ed.2d 973 (July 2, 1980). In the defendant's supplemental brief (p. 13), the closing lines from the [Court's] opinion in Richmond Newspapers were quoted as a proper summarization of his claim. The pertinent language is "[A]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public". ___ U.S. at ___, 100 S.Ct. at 2830.

Admittedly, the Supreme Court, in Richmond Newspapers, supra at ___ n.18, 100 S.Ct. at 2830, declined to define on an apriori basis, the circumstances in which all or parts of a criminal trial might be closed to the public. But the defendant's position was and continues to be that the "articulated findings" requirement of Richmond Newspapers represented a charge from pre-existing law as typified by this Court's opinion in State v. Purvis, 157 Conn. 198, 207, 251 A.2d 178 (1968) cert. denied 395 U.S. 928, 89 S.Ct. 1788, 23 L.Ed.2d 246 (1969). In State v. Sheppard, 42 Conn. L.J. No. 23, p. 6 (1980), this Court seemed to be of a like view.

Yet, in this case, the opinion is conspicuous by the complete absence therefrom of any reference to Richmond Newspapers as guiding constitutional authority. Instead, this Court returned to State v. Purvis and other pre-Richmond Newspapers decisions.

Nearly all of these cases rest squarely on the so-called "sex crime" exception, an apriori classification, under which closures, at least

during testimonies by complainants, were upheld because of the generic type of crime involved. As in this Court's Purvis opinion, 157 Conn. at 207, most of these decisions state their approval of closure orders through use of the much-repeated rubric that "this is a frequent and accepted practice when the lurid details of such a crime must be related by a young lady". This language, in the defendant's opinion, is antithetical to the closing lines of the opinion in Richmond Newspapers, Inc. v. Virginia.

In State v. Sheppard, supra at 7-8, the validity of courtroom closings was discussed in terms of need demonstrated prior to the entry of the order. Here, this Court decided that a factual basis of need was shown albeit informally. In the ascertainment of what was available for the trial judge's consideration, however, this Court may be under some misconceptions. Contrary to language in the opinion (p. 23), the closure order (T. p. 430) which preceded Mrs. Van Rensselaer's testimony (T. pp. 430-489) occurred before the Court's first encounter with the defendant's recorded statement (T. p. 571).

Under the circumstances of this case, the expressed sources of the judge's knowledge were extremely limited. There were the testimony of Mr. Van Rensselaer (defendant's supplemental brief, pp. 6-7) and the information with its four counts of rape and three counts of deviate sexual intercourse which, at the start of the case, was read in open court. (T. pp. 9-10). But, to provide a sufficient predicate for the closure order, this Court has felt compelled to go further. It has presumed that, even in the absence of a request, the trial judge took judicial notice of the entire file including the contents of the warrant application which the prosecution placed on file as part of its response to a discovery motion. By implication,

the decision in this case has established that the "demonstrated need" requirement emphasized recently by State v. Sheppard, supra, can be fulfilled through a presumed exercise of judicial notice. The question that remains is whether the constitutional requirement of "articulated findings" as stated in Richmond Newspapers, Inc. v. Virginia, supra at ___, 100 S. Ct. at 2830 can be satisfied in this manner. If permitted to do so, the defendant will argue "no" advancing among other reasons this Court's recent discussion on articulation which appeared in State v. Ostroski, 42 Conn. L.J. No. 51, pp. 13, 14-15 (June 16, 1981).

II

"Miranda" Rights And Waiver

Reargument should be had to determine what effect, if any, the decision in Edwards v. Arizona, ___ U.S. ___, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) has on this case. The principal point of Edwards is the failure of the police to honor the petitioner's request for an attorney but there is also another aspect. The petitioner, in Edwards, in a manner similar to the defendant, here, showed he was unaware [after receiving Miranda warnings] that for purposes of admissibility the law made no distinction between recorded and unrecorded statements. 101 S.Ct. at 1882.

The opinion in Edwards v. Arizona was issued on May 18, 1981, after the defendant's case was argued but before this Court announced its decision.

## III

## Proof Required To Support Violations Of Cross Section And Equal Protection Requirements For Venires

Reargument should be had to clarify this Court's holding that the statistical data was "deficient" to support the defendant's claim of a violation of his right to equal protection of the laws.

When considered in light of past jurisprudence and the reference in the opinion to State v. Townsend, 167 Conn. 539, 356 A.2d 125, cert. denied 423 U.S. 846, 96 S.Ct. 84, 46 L.Ed.2d 67, the holding of "deficiency" becomes ambiguous. In both Townsend, supra at 549 and the earlier case of State v. Villafane, 164 Conn. 637, 647, 325 A.2d 251 (1973), this Court held that on claims of jury discrimination any [population] statistics which did not show the percentage of the distinctive group in the electorate were "deficient".

One of the defendant's claims was that general population statistics rather than statistics for a smaller group made eligible for jury service by state law had become the constitutional starting point for cross section and equal protection claims. See Duren v. Missouri, 439 U.S. 358, 362, 366, 99 S.Ct. 664, 58 L.Ed. 2d 579 (1979); Castaneda v. Partida, 430 U.S. 486, 490-491, 97 S. Ct. 1277, 51 L.Ed.2d 498 (1977). Whether this claim was accepted or rejected is unclear from the opinion. Clarification is important because of the relationship of this claim to the contention that the statutory procedure for the selection of veniremen [from town boxes] was not a racially-neutral one as applied to Fairfield County.

Respectfully submitted,

Larry Frazier
Defendant-Appellant

BY _____
JERROLD H. BARNETT
Public Defender

His Attorney

ORDER

After having been presented to the Court, the foregoing Motion to Reargue is hereby ordered: GRANTED/DENIED

BY THE COURT

_____
Clerk

## CERTIFICATION

This is to certify that on August 13, 1981, a copy of the foregoing Motion To Reargue was mailed to Donald A. Brown, Esq., State's Attorney, 1061 Main Street, Bridgeport, CT 06604.

JERROLD H. BARNETT
Public Defender
Juris No. 01912
121 Elm Street
New Haven, CT 06510

NO. 8342

STATE OF CONNECTICUT : SUPREME COURT

VS. : STATE OF CONNECTICUT

LARRY FRAZIER : OCTOBER 1, 1 81

O R D E R

THE DEFENDANT'S MOTION TO REARGUE

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT

/s/ Donald H. Dowling

CHIEF CLERK

Notice
Donald A. Browne, State's Attorney
Jerrold H. Barnett, Public Defender
Clerk, Superior Court, Bridgeport
October 2, 1981

SUPREME COURT OF CONNECTICUT

DONALD H. DOWLING
REPORTER OF JUDICIAL DECISIONS

DRAWER N, STATION A
HARTFORD 06106

1 October 1981

Jerrold H. Barnett, Esq.
Chief of Legal Services
121 Elm Street
New Haven, CT 06510

Donald A. Browne, Esq.
State's Attorney
1061 Main Street
Bridgeport, CT 06604

Re: State of Connecticut v. Larry Frazier, 43 Conn. L.J., No. 6, p. 16 (1981)
Motion to Reargue

Gentlemen: Jerry

Please be advised that the court this date denied the appellant's motion to reargue.

The court did, however, suo motu, amend the opinion by deleting part of the second to the last paragraph and by adding footnote 12. The amended portion of the opinion is attached.

Very truly yours,

/s/ Don

DHD/jmd
encl.

Donald H. Dowling

himself and his two children soon after the defendant had departed. Another indication of the sensitivity of the victim was a comment of the defendant contained in the tape recording of his interview at the police station.[12] When he was told of the likelihood of a rape charge, after he had confessed to the burglary and larceny crimes, he mentioned that the woman might be "neurotic" or "crazy" and that he thought she was an alien. Referring again to the rape charge he continued, "It's gonna cause her just as much misery and grief as it's gonna cause me, I mean, appearing in court, you know...." It appears that it was the defendant himself who, when told by his counsel that the courtroom was being cleared because the victim's testimony would probably be of a sexual nature, insisted that the courtroom remain open. Although the transcript does not reveal the hesitation or distress which the victim endured during her testimony describing the various indignities to which she was subjected, defense counsel on two occasions was moved to comment that it was a "difficult situation" for her.

Although the showing of the factual basis which led the court to order closure lacks some of the formality we would prefer, we think the record sufficiently supports the action of the trial court. There is far more here than a simple charge of rape, where the principal issue was whether the victim had consented, which we found insufficient to support exclusion of the public in State v. Sheppard, supra. The basis for this order of the trial court compares favorably with that in many other cases in which closure has been approved under similar circumstances. United States ex rel. Latimore v. Sielaff, 561 F.2d 691, 694 (7th Cir. 1977), cert. denied, 434 U.S. 1076, 98 S. Ct. 1266, 55 L. Ed. 2d 782 (1978); Harris v. Stephens, 361 F.2d 888, 891 (8th Cir. 1966), cert. denied, 386 U.S. 964,

87 S. Ct. 1040, 18 L. Ed. 2d 113 (1967); State v. Purvis, 157 Conn. 198, 207, 251 A.2d 178 (1968), cert. denied, 395 U.S. 928, 89 S. Ct. 1788, 23 L.Ed.2d 246 (1969); State v. Santos, R.I. , 413 A.2d 58, 63-64 (1980); People v. Latimore, 33 Ill. App. 3d 812, 818-19, 342 N.E.2d 209 (1975); State v. Smith, 123 Ariz. 243, 249-50, 599 P.2d 199 (1979); State v. Padilla, 91 N.M. 800, 802-803, 581 P.2d 1295 (1978); Price v. State, (Tex. Crim. App.) 496 S.W.2d 103, 108 (1973); Bivins v. State, (Fla. App.) 313 So. 2d 471, 472 (1975); Commonwealth v. Stevens, 237 Pa. Super. 457, 466-68, 352 A.2d 509 (1975).

There is no error.

In this opinion the other judges concurred.

[12]The transcript indicates that the tape recording did not come to the attention of the court until after the courtroom had been closed and the victim of the sexual assault had testified. Although the trial judge may not have relied upon this tape recording in issuing the closure order, on this appeal we may consider the entire record, including any subsequent trial developments which are pertinent, in order to decide whether reversible error has been committed. State v. Barber, 173 Conn. 153, 160, 376 A.2d 1108 (1977); Palmer v. Adams, 162 Conn. 316, 328, 294 A.2d 297 (1972); Oborski v. New Haven Gas Co., 151 Conn. 274, 278, 197 A.2d 73 (1964). In reviewing the propriety of a closure order in this context, appellate courts have not restricted their consideration to events preceding the entry of the order but have ordinarily reviewed the entire record, including the testimony of the victim following the entry of the order. Harris v. Stephens, 361

F.2d 888, 890-91 (8th Cir. 1966), cert. denied, 386 U.S. 964, 87 S. Ct. 1042, 18 L. Ed. 2d 113 (1967); Geise v. United States, 262 F.2d 151 (9th Cir. 1958), cert. denied, 361 U.S. 842, 80 S. Ct. 94, 4 L. Ed. 2d 80 (1959); State v. Sheppard, Conn. (42 Conn. L.J., No. 23, pp. 5-6) (1980); State v. Purvis, 157 Conn. 198, 207, 251 A.2d 178 (1968), cert. denied, 395 U.S. 928, 89 S. Ct. 1788, 23 L. Ed. 2d 246 (1969).

# INFORMATION

IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT FAIRFIELD COUNTY NOVEMBER TERM, 1974 DONALD A. BROWNE, State's Attorney for the County of FAIRFIELD accuses LARRY FRAZIER of RAPE IN THE FIRST DEGREE and charges that at the Town of WESTPORT, in said County, on the 17th day of NOVEMBER 1974, the said LARRY FRAZIER, being a male, engaged in sexual intercourse with one SALLIE VAN RENSSELAER, a female, by forcible compulsion, in violation of Section 53a-72a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER, being a male, engaged in sexual intercourse with one SALLIE VAN RENSSELAER, a female, by forcible compulsion, in violation of Section 53a-72a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER, being a male, engaged in sexual intercourse with one SALLIE VAN RENSSELAER, a female, by forcible compulsion, in violation of Section 53a-72a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER, being a male, engaged in sexual intercourse with one SALLIE VAN RENSSELAER, a female, by forcible compulsion, in violation of Section 53a-72a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said LARRY FRAZIER with the crime of DEVIATE

SEXUAL INTERCOURSE IN THE FIRST DEGREE and charges that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER did engage in deviate sexual intercourse with one SALLIE VAN RENSSELAER, by forcible compulsion, in violation of Section 53a-75a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER did engage in deviate sexual intercourse with one SALLIE VAN RENSSELAER, by forcible compulsion, in violation of Section 53a-75a(1) of the Connecticut Genersl Statutes.

IN THE SUPERIOR COURT OF THE STATE OF CONNECTI CUT FAIRFIELD COUNTY, NOVEMBER TERM, 1974, DONALD A. BROWNE, State's Attorney for the County of FAIRFIELD accuses LARRY FRAZIER of DEVIATE SEXUAL INTERCOURSE IN THE FIRST DEGREE and charges that at the Town of Westport, in said County, on the 17th day of NOVEMBER 1974, the said LARRY FRAZIER did engage in deviate sexual intercourse with one SALLIE VAN RENSSE-LAER, by forcible compulsion, in violation of Section 53a-75a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said LARRY FRAZIER with the crime of BURGLARY IN THE FIRST DEGREE and charges that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER while armed with a deadly weapon, to wit: a rifle, unlawfully entered the dwelling of ALEXANDER VAN RENSSELAER, with intent to commit a crime therein, in violation of Section 53a-101a(1) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said LARRY FRAZIER with the crime of LARCENY IN THE FIRST DEGREE and charges that at the

Town of Westport, in said County, on the 17th day of November 1974, the said LARRY FRAZIER did commit larceny of the personal property of one ALEXANDER VAN RENSSELAER valued in excess of Two Thousand Dollars ($2,000.00), in violation of Section 53a-119 and Section 53a-122a(2) of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said LARRY FRAZIER with the crime of UNLAWFUL RESTRAINT IN THE FIRST DEGREE and charges that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER did restrain one ALEXANDER VAN RESSELAER under circumstances which exposed the said ALEXANDER VAN RESSELAER to a substantial risk of physical injury, in violation of Section 53a-95a of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER did restrain one SALLIE VAN RESSELAER under circumstances which exposed the said SALLIE VAN RENSSELAER to a substantial risk of physical injury, in violation of Section 53a-95a of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER CHARGES that at the Town of Westport, in said County, on the 17th day of November, 1974, the said LARRY FRAZIER did restrain one SANDY VAN RESSELAER under circumstances which exposed the said SANDY VAN RESSELAER to a substantial risk of physical injury, in violation of Section 53a-95a of the Connecticut General Statutes.

IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT FAIRFIELD County, NOVEMBER Term, 1974, DONALD A. BROWNE, State's Attorney for the County of FAIRFIELD accuses LARRY FRAZIER OF UNLAWFUL

RESTRAINT IN THE FIRST DEGREE and charges that at the Town of WESTPORT, in said County, on the 17th day of NOVEMBER, 1974, the said LARRY FRAZIER did restrain one KILLIAEN VAN RENSSELAER under circumstances which exposed the said KILLIAEN VAN RESSELAER to a substantial risk of physical injury, in violation of Section 53a-95a of the Connecticut General Statutes.

Dated at Bridgeport, Connecticut this 22nd day of November, 1974.

DONALD A. BROWNE
State's Attorney for
Fairfield County

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BILL OF PARTICULARS

1. See attached copy of the Information.

2. All counts - November 17, 1974 between approximately 11:00 A.M. and approximately 12:30 P.M.

3. Area of premises at 12 Pier Way Landing, Westport.

5. First Four Counts - Sexual Intercourse by forcible compulsion;
Counts Five, Six and Seven - Deviate Sexual Intercourse by forcible compulsion;
Count Eight - Entry into a building with intent to commit a crime therein while armed with a deadly weapon;
Count Nine - Wrongful taking of property of another with intent to deprive the owner of it or to appropriate it to himself or a third person;
Counts Ten, Eleven, Twelve and Thirteen -

Restraint of another person under circumstances which exposed the person to a substantial risk of physical injury.

6. The State's file indicates the following items were taken: one 1972 Chevrolet station wagon, one blue suit jacket, one blue shirt, one gasoline can, one checkbook, one brown lady's bag, two motor vehicle operator's licenses, one bank envelope with a gold strap, one pitcher, one bowl, two screw drivers, 18 charge plates or cards, one key watch, one library card, five ticket stubs, one business card, three ladies watches, one bead necklace, one gold necklace, one tape Nelrelco, one silver necklace, two pair dice, one pill box, one small ring, loose change, one wallet, two dollars, six silver goblets, one silver mug, two silver pitchers, one elephant bank, ten silver shot glasses, nine .22 shells, one diamond cluster ring, one gold ring, one jack knife, one five dollar bill, one brown fur coat, one Sony color television set, one red velvet case, one silver necklace chain, one gold necklace chain, one gold bracelet, one silver chain with medalion, three bank books, one empty ring case, one ring case with ring, one ring, one case with broach, purple stones, one silver tray, one silver necklace with rings, one key chain, one silver charm bracelet, one set of pearls, one set of pearls on gold chain, one plastic bag of change, one plastic bag of half-dollars, three cake servers, 15 salt spoons, four knives, one meat holder, eight ladles, one gold spoon, 38 knives, one creamer, one tea pot, one serving tray, two forks, two vegetable bowls, one serving dish with cover, one bread basket, one red gas can cap, approximately 80 spoons, approximately 50 forks.

The State's file does not reflect the value of these items.

STATE OF CONNECTICUT

BY DONALD A. BROWNE
State's Attorney for
Fairfield County

Filed March 26, 1975

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AFFIDAVIT OF JOSEPH D'AIUTO

I, JOSEPH D'AIUTO, a Detective of the Westport Police Department, make the following affidavit:

On Sunday, November 17, 1974 at 12:30 p.m. I was assigned to investigate a complaint made by ALEXANDER VAN RENSSELAER of Westport who complained that his home was just robbed and his wife had been raped by a negro male. Other police officers were given assignments and reported back to me with the results of their investigation. I also read all reports and statements concerning this investigation.

While I was enroute to the scene of this crime, I overheard OFFICER EDWARD MACKIEWICZ, via police radio, say that a male negro had just abandoned a 1965 black Ford, 4 door sedan, Conn. Registration No. SC-1404, less than a quarter mile from the scene of the crime and this male negro is running away. I overheard OFFICER MACKIEWICZ reporting that he is going to give chase after this male negro as he is acting very suspiciously.

OFFICER MACKIEWICZ reported to me a short

time later that he and OFFICER FRED KELLOG had apprehended the male negro, later identified as LARRY FRAZIER. OFFICER MACKIEWICZ also reported to me that he first observed this male negro acting in a very suspicious manner at approximately 12:35 p.m.

Connecticut Registration No. SC-1404 is registered to KAREN FRAZIER, 252 Alex Street, Bridgeport, Connecticut according to Connecticut Motor Vehicle Department.

I interviewed SALLIE VAN RENSSELAER and ALEXANDER VAN RENSSELAER. SALLIE VAN RENSELLAER told me the following: That she, her husband, ALEXANDER, and her two sons, SANDY who is six years of age and KILIAEN who is four years of age had returned home from church at approximately 11:00 a.m. As they entered the kitchen of their home they were confronted by a black male who was pointing a rifle at us. That he ordered us to get down of the floor or he would kill us. They complied. That the intruder ordered her to tie her husband's hands and she did. That the intruder tied her hands in back of her and then tied her children's hands and feet and then her husband's feet. That he ordered her to lead him to the bedroom. That as soon as the four of them were tied the intruder covered everyone's head with different materials. That once he got her into the bedroom he removed her clothing and committed sodomy upon her.That immediately afterwards he forced her to have sexual intercourse with him. That shortly afterwards he again forced her to have sexual intercourse with him. That he continually threatened to kill her husband and children if she made any out-cry. He tied her up again and covered her with a bedspread and left the room for a short period of time. That he returned to the room and forced her to have sexual intercourse with him again. That

after this she heard him leave the room and go downstairs. She heard him removing the pillow-case from one of the pillows in her son's bed-room and she heard him dumping items made of metal in the pillow case. That he returned to the bedroom where she was and forced her to accept his penis in her mouth. That following this he forced her to have sexual intercourse with her again. That after this he committed an act of sodomy upon her again. That the intruder threatened on numerous occasions that he would kill her children if she told anyone that he raped her. That during the entire episode he kept something over her face to block her vision and he told her that he would take her life and the lives of her children if she ever identified him. That after he attacked her the last time he removed a diamond and ruby ring from her finger and this ring is worth at least One Thousand ($1,000.00) Dollars. That after the intruder had left the house she had realised that a televsion set, a large quantity of silver, a 1972 chevrolet station wagon and other personal property was missing from the house. That the total value of these items were in excess of Four Thousand ($4,000.00) Dollars.

ALEXANDER VAN RENSSELAER told me the following: That he, his wife and two children had returned home from church at approximately 11:00 a.m. and upon entering the kitchen they were confronted by a black male who was carrying a rifle and pointing it at them. That they were all ordered to lie on the floor and not to look at him. That they lied on the floor and the hands and feet of he and his two children were tied and everyone's heads were covered. That his wife was told by the intruder to lead him to the bedroom. That the intruder walked through the kitchen several times and he could see from underneath the quilt the type of shoes

and pants the intruder had one.[sic] That the intruder has asked him if the gasoline in the red gasoline can in the garage was regular gasoline and he told him that it is. That he heard the intruder walking throughout the house and he heard the clanging of metal objects. That the intruder threatened to kill him, his wife and children if anyone ever identified him.

OFFICER MACKIEWICZ reported to me that while he was chasing LARRY FRAZIER on foot that FRAZIER took off a blue pinned striped suit jacket which he was wearing and threw it to the ground. I was present when OFFICER MACKIEWICZ showed this jacket to MR. VAN RENSSELAER and MR. VAN RENSSELAER positively identified this jacket as belonging to him and taken from his home.

ALEXANDER and SALLIE VAN RENSSELAER viewed the clothing which LARRY FRAZIER was wearing at the time he was apprehended. They both identified the shoes and pants as being the one's worn by the intruder. ALEXANDER VAN RENSSELAER also identified a light blue shirt which was worn by LARRY FRAZIER at the time he was apprehended as belonging to him and taken from his home by the intruder.

OFFICER MARK BRENNAN reported to me that he located a .22 Caliber Remington rifle a short distance away from where LARRY FRAZIER abandoned the 1965 black Ford. ALEXANDER and SALLIE VAN RESSELAER examined this rifle and both told me that this was the same rifle displayed by the intruder.

ALEXANDER VAN RENSSELAER examined the 1965 black Ford in my presence and after examining it carefully told me that the five gallon red gasoline can located on the right rear deck

of the Ford was the same gasoline can missing from his garage.

Approximately one hundred yards behind the black Ford which was abandoned by FRAZIER I found the 1972 Chevrolet station wagon which is owned by the VAN RENSSELAER's and reported stolen by them. Inside the back of this station wagon was a television set and two pillow cases filled with silver goblets, other pieces of silver, a quantity of blank checks, two rings and other personal items which were identified by SALLIE and ALEXANDER VAN RENSSELAER as missing from their home.

ALEXANDER and SALLIE VAN RENSSELAER told me that there was only one intruder in their home.

I interviewed LARRY FRAZIER and he admitted that he had just burglarized this home and took a television set, jewelery and other pieces of silver and placed them in the station wagon that belonged to the people and drove away. He said that he took a can of gasoline from the garage because his car had run out of gas and he needed gasoline.

/s/ Joseph D'Aiuto, Detective
Norwalk Police Department

Signed and sworn to before me this 21st day of November, 1974.

/s/ Sgt. Wm. J. Smith

A Portion Of The Proceedings At The Start Of Petitioner's Trial On June 4, 1975 (T. pp. 9-12)

THE CLERK: Gentlemen, as I call your name, you stand up and remain standing.

(Whereupon the attendance was taken.)

THE CLERK: Will you raise your right hand, please?

(Whereupon the jury panel was sworn in.)

THE CLERK: Gentlemen, the accused is charged with 13 counts in this information. The first four counts are rape in the first degree. The charges are that at Westport on the 17th day of November, 1974, Larry Frazier, being a male, engaged in sexual intercourse with one Sally Van Rensselaer, a female, by forcible compulsion in violation of Section 53A-72a (Subsection 1) of the Connecticut General Statutes, four similar counts.

On the same date, the fifth, sixth and seventh counts are charges of deviate sexual intercourse in the first degree. At said time and place in Westport, in the County of Fairfield on the 17th day of July, 1974, the said Larry Frazier did engage in deviate sexual intercourse with one Sally Van Rensselaer by

forcible compulsion in violation of Section 53A-75a (Subsection 1) the Connecticut General Statutes.

MR. BROWNE: Would you read that again? You said the 17th day of July.

THE CLERK: I beg your pardon. On the 17th day of November.

THE COURT: All right.

THE CLERK: And on the counts seven and eight -- pardon me, counts nine and ten, --

MR. BROWNE: That would be count eight. You only read seven.

THE CLERK: Pardon me. Four and three were seven. Four rapes in the first degree, three deviate sexual intercourses in the first degree.

Count number eight, burglary in the first degree, at Westport on the 17th day of November, 1974, the said Larry Frazier, while armed with a deadly weapon, to wit, a rifle, unlawfully entered the dwelling of Alexander Van Rensselaer with intent to commit a crime therein, in violation of Section 53A-101a (Subsection 1) of the Connecticut General Statutes.

Count number nine, the crime of larceny in the first degree, at Westport on the 17th day of November, 1974, the said Larry Frazier did commit larceny of the personal property

of one Alexander Van Rensselaer valued in excess of $2,000, in violation of Section 53A-119 and Section 53A-122a (Subsection 2) of the Connecticut General Statutes.

Now, there are counts ten, eleven, twelve and thirteen. The tenth count is a charge of unlawful restraint in the first degree. At Westport in Fairfield County on the 17th day of November, 1974, the said Larry Frazier did restrain one Alexander Van Rensselaer under circumstances which exposed the said Alexander Van Rensselaer to a substantial risk of physical injury in violation of Section 53A-95a of the Connecticut General Statutes.

Count eleven, at Westport on the 17th day of November of 1974, the said Larry Frazier did restrain one Sally Van Rensselaer under circumstances which exposed the said Sally Van Rensselaer to a substantial risk of physical injury in violation of Section 53A-95a of the Connecticut General Statutes.

Count twelve at Westport, Fairfield County, on the 17th day of November, the said Larry Frazier did restrain one Sandy Van Rensselaer under circumstances which exposed the said Sandy Van Rensselaer to a substantial risk of physical injury in violation of Section 53A-95a of the Connecticut General Statutes.

And Count 13, at Westport, Fairfield County, 17th day of

November, 1974, the said Larry Frazier did restrain one Kiliaen Van Rensselaer under circumstances which exposed the said Kiliaen Van Rensselaer to a substantial risk of physical injury, in violation of Section 53A-95a of the Connecticut General Statutes.

Now, to these charges the accused has been put to plea, and for his plea he says that he is not guilty of the crimes charged. It is for you to inquire whether he is guilty or not guilty. And if you find him guilty, you will by your verdict say so. And if you find him not guilty, you will by your verdict say not guilty. So, please attend to the evidence.

THE COURT: You may proceed, Mr. Browne.

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Warning - Waiver - Statment Form

WESTPORT POLICE DEPARTMENT
WARNING

THE CONSTITUTION REQUIRES THAT I INFORM YOU OF YOUR RIGHTS.

You have a right to remain silent. If you talk to any police officer, anything you say can and will be used against you in Court.

You have a right to consult with a lawyer before you are questioned, and may have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you, if you wish, before any questioning.

If you wish to answer questions, you have the right to stop answering at any time.

You may stop answering questions at any time if you wish to talk to a lawyer, and may have him with you during any further questioning.

PLACE *Westport Police DATE *Nov. 17, 1974
TIME *7:04 P.M.

* - written by Detective D'Aiuto.

WAIVER

I HAVE BEEN ADVISED THAT:

I have the right to remain silent. /S/ L.F.

If I talk to any police officer, anything I say can and will be used against me in Court. /S/ L.F.

I have the right to consult with a lawyer before I answer any questions and I may have a lawyer with me during questioning. /S/ L.F.

I have the right to have a lawyer appointed for me, if I cannot afford one, before I answer any questions. /S/ L.F.

I know that if I answer questions, I have the right to stop answering at any time. /S/ L.F.

I may stop answering questions at any time if I wish to talk to a lawyer, and I may have him with me during any further questioning. /S/ L.F.

I am willing to answer questions and make a statement knowing that I have these rights. I do not want a lawyer at this time. I know and understand what I am doing. I do this freely and voluntarily, and no threats or promises have been made to me. /S/ L.F.

/S/ Larry J. Frazier

STATEMENT

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Transcription Of The Tape Recording Played At The Hearing

Legend (See T. p. 1021).

D = Detective D'Aiuto

F = Defendant, Larry Frazier

S = Lieutenant Smith

ST = Chief Stephen

Dr = County Detective Draper

(1)

Hello, Mrs. Henrietta Frazier, this is Detective D'Aiuto, Westport Police. Uh, we

have your boy Larry here. Well, he wants to talk to you so I'll let him talk to you...okay, okay, hold on.

Hey Mom,...Who's this?...They got me for robbery...they got me with a lot of charges...tell Momma I took that car...I told them that I took her car...they got me...no.. Don't matter, Sissy...yes... (indiscernable)...ain't gonna be a bond. If there be a bond gonna be about a couple hundred thousand dollars...It's gonna, what, who's this?,,,tell Momma they snatched her bonds off me...Westport...I'm through...robbery, they trying to charge me with rape too...Yea.

D. Come on, Larry.

F. I got, hey dig this here I got to go... what?...Westport Police Station...they got it...yea...If I cooperate...ha, they want me to confess...to the crime.

D. Larry.

F. I don't have nothing to lose; I got to see that Mamma gets her car back; tell Momma I said I'm sorry...Hey whenever I come to court do me a favor and bring me some more clothes and some shoes, bring a whole lot of things, I should be in Court Monday,...If, if if you can't get them down there bring them to the jail... what's this, now, you can't bring me no clothes.

D. Now.

F. I mean some time today.

D. Yea, sure.

F. Bring me...Bring me...They said you can bring me clothes...bring me shoes, under clothes, bring me the whole set up... Tell Momma, and ah, and ah, don't need to mention to her...just tell her that I said I'm sorry...yea, but you ain't ashamed but you ain't got to do the time that I gots to do...I'm the one that's gonna feel bad...O.K. bye...bye.

D. O.K. can you turn around this way, Larry? What's...you want to give us the story now and tell us what happened? Start with your car stopping out on the road out there...

F. Uh, my car stopped...uh...I ain't signing no statements.

D. All right, well then tell us and then, uh, and uh, if you don't want to sign a statement, you don't have to sign a statement, it's up to you, did you? You were read your rights at the scene, right?... down, huh?

F. Yea.

D. O.K. did you sign the back of that card that the officer gave you?

F. No.

D. O.K. Would you sign a statement...here... not a statement but a paper saying you were read your rights...want to look at this Larry? Did

(2)

you read..OK? Now this is...this is the morning (sic) (warning) and it's very similar to what you read before...OK?

You have a right to remain silent not to talk to any police officer, anything you say can and will be used against you in court and have a right to consult with your lawyer before your questioning and may have one during questioning. If you cannot afford a lawyer one will be appointed for you if you wish before any questioning. If you wish to answer questions you have the right to stop answering at any time, you may stop answering questions at any time if you wish to talk to a lawyer and you may have one with you during any further questioning, OK, now I would like you to just fill that in... and a...right here, you read these out... you want to read those out.

F. (Indiscernable) (sic)

D. Just

S. Your name, that's all.

D. Just your, well...no you don't have to do that, I'll fill this in. This is the top, this is what, this is Westport Police Station, right?...O.K. and today is November 16th or 17th?

S. 17th, Sunday the 17th.

D. November..74, and the time is 2:04 P.M. Now just read these out loud and initial them on these things right here...just to show that you read them, O.K.

F. I can't read.

D. You can't read that?...O.K. I'll read them off to you...I have been advised that, right, I have the right, right to remain silent, can you iritial that? If

I talk to any police officer anything that I say can and will be used against me in Court, can you initial that?

F. I'm not saying that...

D. Huh?

F. Not that is I talked to any police officer.

D. No. No. No. You're just initialing the fact that this has been said, you know that this...that your have read that, you're not initialing, you're not signing that you said anything...you know what I mean...this is all I want you to sign.

F. Initial what?

D. Put your initials right here, in other words stating...O.K. and then your initials on this one I have the right to consult with a lawyer before I answer questions and to have a lawyer with me during questioning, O.K.? I have the right to have a lawyer appointed for me if I cannot afford one before I, answer any questions, O.K. and that's that one there...I know that if I answer questions I have the right to stop answering at any time...and I may stop answering questions at any time if I wish to talk with a lawyer and may have him with me during further questioning, O.K., O.K. now, O.K. now you got...I am willing to answer questions and made a statement...I have these rights. I do not want a lawyer at this time and I understand what I am doing. I do this freely, and voluntarily. No threats or promises have been made to me, right?

(3)

F. Uh, this here, this here, this this here relates to a statement. I'm not gonna to write no, I'm not gonna give no sworn statement.

D. No. No. No. I know your (sic) not. All that this is is a waiver of your rights, so that, in the event you're gonna, you said you're going to to tell me what happened, isn't that right? I don't even want to know what happened unless you put it, unless you sign, sign here your legal signature.

D. O.K. Now, will you just tell me like you started before, from when your car, did your car run out of gas on Saugatuck Avenue, there?

F. Yea.

D. O.K. Now you want to tell me about it?

F. It ran out of gas, man and I pulled a B. and E.

D. It ran out of gas and you pulled what?

F. And I decided to pull a B. and E.

D. Did you get gas before it...uh thing... before you went to pull a B. and E.

F. I had gas in my car.

S. Are you telling us the whole story?

D. You had gas in your car, all right, well tell me go ahead and tell me.

F. I had gas in the trunk.

D. O.K. and what did you do?

F. I gassed it up after I did the job.

S. Where did you do the job?

F. I don't know where I did the job, man I don't...

S. How did

D. A short way from the house, or from the car where you were parked.

F. Yeah it was a short ways.

S. How did you get into the house?

F. The door was open.

S. What door?

F. Garage door.

S. Garage door...once you got into the garage was there another door leading into the house,

(4)

S. Where did that door take you, the kitchen or what area of the home.

F. Kitchen and the living room.

S. What did you do once you got into the home?

F. Start looking for the merchandise.

S. Find any merchandise?

F. I found a thing.

S. Pardon.

F. I found a thing.

S. What did you find?

F. Jewelry, rings, change.

S. Men's jewelry or women's jewelry?

F. Men and women.

S. Where was this in the bedroom?

F. Yup.

S. Was it upstairs or downstairs?

F. Upstairs.

S. Upstairs?

D. How's about the silverware?

F. Yeah.

D. T.V.?

F. Yeah.

D. What, was it a T.V. or not?

F. Yeah.

D. What kind? Color or black and white.

F. I don't know if it was color or black and white.

D. Portable or big one?

D. Huh?

F. A middle size portable.

D. Middle size portable.

(5)

S. What did you do with the merchandise?

F. Put it in their car.

S. What kind of a car was it?

F. I don't know what make car it was.

S. I mean was it a station wagon, a sedan, a coupe, convertible...

F. Imagine it was a station wagon.

S. It was a station wagon, remember the color?

F. Nope.

S. All right where was the station wagon in the garage of the house?

F. It was in the garage.

S. It was in the garage.

F. Hmm.

S. Where were the keys for the station wagon?

F. In the car.

S. In the car. What did you do after you put the merchandise in the car?

F. I left.

S. All right you left. Tell us what happened when you left.

F. That's when I decided to gas my mother's car up.

S. Hmm. Then what happened? You were gassing your mother's car up and then what happened.

F. That's when the police showed at the scene.

S. All right, now when you were in this house did you meet anybody in the house?

F. They came home.

S. When you say they, who was it, a man and his wife or a woman and a man?

F. It was...

S. And they found you in the house and what did you do then?

F. I tied them up.

S. What did you tell them when they came in the door?

F. To get down on the floor and nobody will get hurt.

(6)

S. Did you have a weapon at that time?

F. I made like I had one.

S. You made like you had a weapon. O.K. you told them to get down on the floor and no one would get hurt, now what did you tie them up with?

F. Rope.

S. Where did you get the rope?

F. I cut it off the shades.

S. Cut it off the venetian blinds type shades, is that what you're saying? Now what did you do then?

F. I tied them up.

S. Uhuh, then what happened?

F. Then I separated them.

S. You separated them, now, when you separated them, what did you do when you separated them?

F. After I separated them I told them just to be cool and everything was going to be all well.

S. All right, now where, now where did you have the man?

F. Downstairs in the kitchen.

S. In the kitchen, what did you do with the woman?

F. Put her in the bedroom.

S. Where on the second floor?

F. Yes.

S. All right.

F. Put the kid in a closet.

S. Put the kids in a closet, all right, what did you do then.

F. Then I started looking for the merchandise, for the merchandise.

S. All right, now what did you do with the woman?

F. I told you I just tied her up and put her in the bed and just told her to be quiet and there wouldn't be no trouble.

S. Wouldn't be no trouble, how long did you say you were in the house?

F. About twenty minutes.

S. About twenty minutes...What time did your car run out of gas...?

(7)

F. (Indescernable) (sic)

S. Early this morning?

F. It was early in the morning...about nine o'clock or nine thirty.

S. About nine thirty, and you were with the car all that time?

F. Yeah.

S. That was about four hours you were in the area, then.. Is that the only house you hit?

F. The car conked out at like nine o'clock.

S. Uh huh...

S. And how about the woman?

F. What about her?

D. Well you said before you said right on the phone that we were going to charge you with rape.

F. Yeah.

D. Did you rape her or not?

F. No, I didn't rape that woman.

D. Why did you say I know you didn't rape that woman. You told us that you were going to be straight with us, we were straight with you.

F. I told you, I told you I didn't rape the woman. Now if she want to bring that jive as charge that's her business, I didn't touch that woman.

S. Let me ask you, did you belt her one?

F. No, I didn't even hit the woman.

S. Didn't hit the woman? Did she have a black eye when she came in?

F. No, I tried to treat her with respect, I just told them I did not hurt nobody and I would not harm none of the children and they didn't have to worry about big operation.

S. Larry would you give us a statement to what you just told us now?

F. No.

S. No way, huh?

F. No.

S. How come you're smiling? What you told us so far, is that the truth?

F. Yeah.

(8)

S. Has anybody threatened you in any way?

F. Ahh I could say a few ways before I got here.

S. Has anyone promised you anything?

F. No.

S. What you told us is the truth, right?

F. Yes.

S. Larry, you been in the service?

F. Nope.

S. Never been in?

F. Nope.

S. You know what time it is now?

F. Nope.

S. It's 2:15 is that right according to the watch, 2:10, 2:12, what time is it?

F. I would say its about 2:14, no about 2:14, between 2:13 and 2:14.

S. That's pretty close and today is what, Sunday?

F. Yeah.

S. What's the date today, do you know?

F. I don't know I just hear a policeman say the 17th.

S. 17th is right, in the good year of our Lord, Nineteen Hundred and Seventy-Four... is there anything else...

D. You don't admit to having that rifle in the house.

F. No, I don't remember having no rifle.

D. When you were in the house.

F. I don't remember having no rifle.

D. You don't remember having a rifle.

F. No.

S. What were the words you used when you told them to get on the floor?

F. Just told them to get on the floor and nobody would be hurt.

(9)

S. How old would you say these people were?

F. I don't know. I didn't bother to get a good look at them.

S. Any idea how they were dressed?

F. Nope.

S. Who did you tie up first the man or the woman?

F. Man.

S. How did you tie him up?

F. Tied him up, I just tied him up.

S. Did you tie his hands and his feet.

F. Tied his hands and feet.

D. Larry, when you--when you drove out, you drove the car out to about where your car was, right, you drove their car to their garage, is that correct? All right now what were you going to do there when you put that car out there? You had all their stuff in their own car, right, what were you going to do then?

F. I couldn't leave my mother's car.

D. You couldn't what?

F. I couldn't leave my mother's car.

D. So what were you going to transfer the stuff or what, you didn't go through all that trouble to leave it in the car did you or what?

F. I don't know if I was going to transfer it, I was going to try to move my mother's car.

D. Oh, you wanted to take both of them.

F. I wanted to move my mother's car, you know, out of the area.

S. And then came back and get the other car, right?

F. Yeah.

S. Yeah.

S. Where were the victims and the people when you left the house?

F. Separated, one in the bedroom, one downstairs, two in the closet.

S. Did you lock the closet?

F. Put a chair behind it.

S. A chair against the knob?

(10)

F. Not behind the knob just up to the door.

S. Did you tie the kids up?

F. Yeah, I tied them. I didn't tie them.

S. Tight?

F. Not tight, I just tied them you know, loose, like you know, took one rope, put it on their little arms, you know left it so they could move around.

S. How old were the kids?

F. I don't know.

S. Any idea?

F. Nope, they were young, I know this.

D. Little kids.

S. Were they boys or girls?

F. I imagine they was boys.

S. Is there some reason you won't tell us about molesting the woman, are you afraid?

F. I didn't molest that woman.

S. Well, she says that you did.

F. Yeah, well she say it and I can say that she can say it and she can say it.

S. But the only thing that's gonna prove if she was, is the doctor's physical examination.

F. Doctor can take a physical exam... That ain't got nothing to do with me.

S. Can you tell us why your fly was open when you were apprehended?

F. I was in the water, in fact, my fly is messed up or my pants anyway.

F. Rape, that's ridiculous.

S. You didn't touch her.

F. No, I didn't touch that woman.

D. Why do you think she would tell us something like that?

F. I don't know...could be because I'm black.

D. Oh, I don't think it's that.

F. (Indiscernable)

(11)

S. Would you close that windcw, it's cold.

F. That's out of my league.

S. What's out of your league?

F. Rape.

S. Was she a good looking woman?

F. I wasn't interested in her, her looks or what she was.

S. Any reason why you think she would say that she was raped.

F. Uh, uh.

S. Hh.

F. I can't say why she said it and I can't say why she did and why she would and why she didn't...(Indiscernable)

S. Are you on some drugs right now?

F. Yeah I'm on drugs.

S. What are you taking?

F. Heroin.

S. When was the last time that you had a shot of heroin?

F. Yesterday.

S. What time yesterday?

F. About...(indiscernable)

S. How big is your habit?

F. Fifteen bags, fifteen to twenty bags a day.

S. Pretty good size...do you want a cigar-

ette...where did you get that ring you're wearing?

F. I didn't get it from them.

S. That wasn't my question, what's S.H.S.?

F. I bought it from somebody.

S. Oh yeah?... is there anything else you want to tell us?

F. That's all, that all I can remember doing.

S. That's all you remember doing. Do you think it's possible that you did something and don't remember.

F. No.

(12)

St. All right I'd like to go off here... Do you own a gun, do you own a gun, do you have a gun at home?

S. Larry.

F. I don't own no guns.

S. You don't own no guns... did you see any guns in that house?

F. Ugh Ugh (negative)

S. Are you sorry for what you've done?

F. The only thing I'm sorry is the woman told a lie.

S. But you're not sorry for what you did?

F. I didn't harm nobody... or hurt.

S. Well you figure, you shook them up a little bit.

F. I didn't hurt them. It could have been worse.

S. What do you men (sic) it could have been worse?

F. I was just the gentle type. I didn't hurt them. I didn't want to hurt them. They were innocent people to me. Also I didn't want to get hurt either.

S. You figure you shook them up a little bit?

F. No. I don't figure I shook them up. I told them from the beginning I wouldn't harm them or the children.

S. If somebody walked into your house and told you to get down on the floor and tied you up wouldn't you be frightened?

F. I would just get down on the floor.

S. You didn't answer my question would you be frightened?

F. I couldn't, I couldn't put myself in that position...I couldn't say if I would be frightened or not frightened.

S. You done anything like this before?

F. Nope.

S. You said you have previous arrests, what are they for.

F. B. and E.

S. Is there anything else you want to tell us?

F. I've told you all I know.

F. I mean that lady screaming rape and I've got all these charges...and rape is such an embarrassing thing too, I,

(13)

S. You know,...You know its funny with individuals when it comes to rape, you know... You know, sometimes you can't control the emotions, you know...a woman gets you all exicted and so forth and so on and you know you being human like we all are right, everybody is human, everybody has a certain feeling and emotion, and sex drives and all that sort of thing, you agree to that?

F. Yea. But everybody is not weak like that, there.

S. What do you mean, weak?

F. It takes a sick degenerate mother-fucking person to do that bullshit and that's not in my, that's not, that's not in my class.

S. Did she offer it to you in any way?

F. No she didn't offer nothing to me.

S. Hmm.

F. She never said nothing to me out of the way.

S. What did she say to you? Did you have any conversation with her?

F. No, I just told her and she just said don't hurt my children, I told her I would not hurt her children or nobody

in the house.

S. Ugh-Huh.

S. Larry, what did you use to cut the sash curtains...you know, the rope...

F. I snatched them off.

S. You didn't have a knife or nothing...no... scissors?

F. Ogh. Ugh (negative)

S. You just busted them with yours hand?

F. Hmm-Hmm (Affirmative)

F. Why, can she identify me?

S. Did she identify you?

F. Yea.

S. Well you were there for quite some time weren't you?

F. Well what's that got to do with her identifying me though?

S. What I'm saying, it stands to reason if you were there, the husband was there, she was there, the two kids were there, any reason why she can't identify you.

F. Could be a lot of reasons why she can't identify me.

S. For instance.



F. For instance, they may have never, I have,

they may have really seen how I look.

S. Why did you have your face covered?

F. I'm not saying I had my face covered and I'm not saying I didn't have my face covered.

S. Well we're just trying to, you know, to reason this thing out you see if they can't identify you there must be a reason...but there's other situations that, you know, all right, take it, put it this way, supposing you had a say a ski mask over your face, all right, under those circumstances, it is pretty difficult to identify somebody, all right, and another for instance, you were wearing gloves at the time, right?

F. I was?

S. I'm just saying I'm giving you a face mask, and I'm giving you a pair of gloves, right, which is gonna make it pretty impossible to get fingerprints and pretty hard to identify a person with his face being covered all right, how about this other clothing, you know you were wearing other clothes, it's possible for identification purposes through the clothes, right, and the situation where the woman occurred where there was sexual contact, there's evidence that you leave, that you're not even aware of, I talking besides the semon, (sic) you know there's hair, you know what I mean, this is where you come into the different fold of criminal investigation that you leave there you know what I mean, it's very possible for you to be identified through these other sources, you follow me?

F. Possibly.

S. The way it is today that's what they go on.

F. Anything is possible.

S. Sure, you know what it's called?

F. What?

S. Forensic science.

F. Yeah.

S. That's where all the smart guys come in with all them you know, test tubes and microscopes, and the whole bit.

F. See if they find any of my hair on any prints.

S. Let me tell you something, if they're there they're going to find them...O.K.?... you don't seem like a bad guy why did you get yourself fouled up like this for... you working...you need money...you have a big habit.

F. Yeah.

S. Huh?

F. I really do...and with the status this country is in now, I mean, uh...

(15)

S. The country is always in some kind of a state, isn't it?

F. Yeah, but it ain't never been, it ain't never been bad as it is been now.

S. Wonder what's so bad about it right now.

F. Yeah well I wasn't there back there in the 30's, I don't know nothing about it.

S. Prices are high...

F. I can only relate to now.

S. Like they say, sugar is up, right, as long as you have the buck to pay for it,...

F. Everything is up, everything costs double these days.

S. You got a girlfriend?

F. No.

S. No? No girlfriend?

F. No.

S. When's the last time you held a job?

F. About three weeks ago.

S. What did you do?

F. Dishwasher.

S. Where?

F. For a friend in a restaurant?

S. In Bridgeport?

F. Yeah.

S. What's the name of this restaurant?

F. (Indiscernable)

S. You ever done any time?

F. I done a few years in Somers.

S. For what?

F. For Breaking and Entering.

S. That was the only time you've ever done.

F. I've been to Somers twice, I've been to Cheshire twice, I've been to Meriden twice.

(16)

S. You've done a whole lot of time.

F. Yeah, I know.

S. Two times in Somers, for what?

F. B. and E.

S. All B. and E.'s?

F. Yeah.

S. Out of where, Bridgeport?

F. Yeah.

S. Huh?

F. Bridgeport, Fairfield...Milford

S. All B. and E.'s?

F. Yeah.

S. How long ago was this? You're not that old?...How old are you?

F. Twenty-four.

S. Twenty-four, when did you get out of Somers?

F. I got let out of Somers about six weeks ago.

S. Whose your parole officer?

F. I don't have no parole officer, I'm discharged.

S. Oh, you're discharges, (sic) uh?... All B. and E.'s.

F. Right.

S. How long you been using heroin?

F. Since going to seventh grade.

S. You won't give us a statement, though, eh Larry?

F. No...I'm not going to put myself in, in a, grave.

S. Well you told us about it.

F. Yeah, but that ain't nothing.

D. Well I know, What's the difference, Larry?

F. The difference is it's not in ink.

S. Well, is there anything you want, we got you a cup of coffee coming in...you hungry?

(17)

F. Yeah.

S. What do you want to eat?

F. A hamburger.

S. A hamburger. How would you like you (sic) hamburger?

F. No onions.

S. No onions.

F. No cheese.

S. No cheese.

F. Just kitchup.

S. Just ketchup, huh...O.K.

F. Well done.

D. Larry, tell me somethin, why did you, how come you gassed your car up after you broke in, if the gas can was in the trunk?

F. Cause I figured, I figured it would be better for me to wait.

S. Just in case, what?

F. Just in case, I just in case, just in case somebody spotted me.

D. Is that the reason you carried the gas in your trunk...or was it a mistake?

F. I didn't even know it was in there, my... I didn't really know it was in there...

F. Oh, stop lying, Larry hah, and tell the truth.

F. I got the gas can from the man's house.

S. You did.

D. O.K.

F. Well you gonna tell me anyway.

S. Right.

D. Well we know that, but you know we figure if you want to cooperate, and sometimes that can help you...if you, tell you... you told us you were going to twll(sic) us the truth.

F. Well I got the gas can from the man's house.

D. Is there anything else that's true or do you want to tell us another story or tell us...

F. It's the only thing that I lied about that I got the gas can from the...

(18)

S. Didn't he about...

D. Was it full?

F. No it was half full.

D. Half-full and, and it was where in the garage, in his car or where?

F. In the garage.

D. In the garage.

F. That was the only thing that I put in my mother's car...and that didn't get me far.

S. Hmm...didn't get you off the street, did it?

F. I got a little ways down the street.

BUZZER SOUNDS

S. Yes...all right, thank you.

D. You know like Detective Smith was telling before...when, you know, like forsenic (sic) science and the fact that we do look for physical evidence and once all this is compiled and you know, there are certain things that we can prove and you also know, you know having had experience in court, naturally, right, that if you go straight on your statement, that the you know, the court always makes allowances, right, for guys being straight with it, is that true?

F. The court ain't going to make no allowances.

D. Why?

F. Why should they?

D. Why wouldn't they? ...Haven't they is (sic) the past?

F. No...they ain't made no allowances on me.

D. Have you,have you come clean with them and give it to them straight?

F. Yeah and everytime I give it to them straight I get, I, I get the mother-fucken bullshit, I get the shovel with the shit

on it.

S. O.K. Larry...everything you told us is the truth to this point, huh?

F. Yes.

S. You don't want to tell us anything more?

F. Ain't nothing else I did.

S. Nothing else to tell us, right.

D. And you don't want to give it to us in a signed statement.

F. I want to see, I want to see what the charge is.

(19)

D. Were...you were charged already, weren't you, charged with...

F. No, I wasn't charged with nothing.

D. For the burglary and for the rape.

F. They didn't charge me with nothing. I asked what I was charged with and an officer told me to wait until later.

D. Is your sister coming down with clothes, Larry or what?

F. She said...that...

D. How big is your habit?...How much, not in bags but how much in money, what does it cost for each day?

F. Four of (sic) five hundred dollars.

D. Four or five hundred dollars a day?

F. Hmmm.

D. So this means that this isn't the first job that you pulled, is it?... I mean, you sure not, you sure as hell not working and paying for a habit, not four or five hundred dollars a day...that kind of money, you're some kind of a miracle man, no?

F. It can be done.

D. Hah?

F. It can be done.

D. It can be done?

F. Heah.

D. How do you do it? Come on give me a clue. clue...

F. A magician never gives away his tricks and uh...uh his tracks.

D. Give me a hint...give me some kind of hint.

F. It don't matter.

D. Huh?

F. It don't matter no more.

D. Well it might matter to me or someone else... You got something going for you that no one else has?

F. It can't help me, how's it going to help anybody else?

D. That's what, I didn't say it was going to help you, that's what I said it could help somebody else.

F. No.

(20)

D. You got something going for you that we don't know about?...or what you're saying is that you don't want to tell us that you were involved in any more breaks.

F. I wasn't involved in any breaks.

D. Now how could you sup, how could you supply yourself with four or five hundred bucks a day?

F. Well, it sounds, it sounds hard but... all is fair.

D. Well, you're not going to give me a signed statement anyway, is that right?

F. Right.

D. You gonna deny what...you...that the story you told us now when I try and relate it at a later time...is that what you're planning to do or what.

F. Yeah, when she put that rape on me I am ...she wants a, you know. They want to be nasty about it, you know, I could...

D. Oh. I don't know if they want to be nasty, they might be telling the truth and maybe you're, you're, like you say, it's a, it's a it's a really bad thing, it's a, you know, something that you don't even like yourself, right?

F. I don't need nothing I don't like.

D. Well sometimes we can't help ourselves, I guess, you know, situations, apparently that's, apparently in the past those things have happened...but regardless of that what eh...tell me about this four or five hundred bucks a day...how can you dig up four or five hundred bucks a day to support a habit?

F. (Indiscernable)

D. I'd like to know, is there any reason, eh...you know.

F. I feel like it's immaterial.

D. It's immaterial to this case, yes.

F. Immaterial to these present circumstances that I am up under...I'm going to...I'm going back to the penitentiary, ain't no need for me to bury myself in no more, I got enough shit on me now to hold me for the next twenty years.

D. Right.

F. Or more.

D. I guess you're speaking truthful there.

F. You know I might beat some of it.

D. Well...O.K. if you can...all well and good, but I don't think you're going to beat it, Larry, I don't believe you're going to do that.

F. Yeah, well they need more than her word that's for sure.

D. Well, that's what we were just trying to explain to you...

F. For all I know...

D. We don't go just on somebody's word.

F. For all I know, she could be a neurotic, for all I know the woman could be crazy, for all I know.

D. Well, that's possible, but, we, also, you know, you have witnesses, to that effect, you bring in people that she knows, a doctor.

F. Matter of fact, matter of fact, ain't she matter of fact, ain't she a alien or something?

D. I don't know, why do you say that?

F. I don't know, I just, I don't know, I just had a hunch she was a alien or something

D. Let me ask what gave you the hunch though, it must be something.

F. Just a hunch, just the style of the way the house was.

D. You mean you think she was a alien?

F. Ugh huh

D. Ugh...that doesn't sound...

F. Shot in the dark, that's all it was.

D. Shot in the dark.

F. Hmm

D. More than that, at least it started out that way.

F. Well, I can tell you right now that I'm, I'm sure that you're charged with the robbery right now, burglary, robbery actually and, eh, and rape and you're going to be charged with the rape.

F. (Sigh)

D. Also...the larceny, theft of an automobile.

F. Two counts of it.

D. Why two counts?

F. Because I stole my mother's car, I told you before.

D. I thought you said that you wanted to try and get that back, if she doesn't make a statement in the effect that you stole it.

(22)

F. Well she knows I stole it anyways so she gonna make a statement.

D. All right.

S. Where's Malone, Joe, is he here?

D. Malone, No. I think he's over at...do you have a coffee for this gentleman? Yes, give him a coffee, he needs it more than me...O.K. Thank you...did they send out for a hamburger for this guy?

S. Not that I know of, I wasn't holding any...

D. How did you see... Do you want a hamburger, Larry?

F. Yes.

D. I forgot how did you say you wanted it?

F. Well done, no onions with just ketchup.

D. Just ketchup.

F. That's a bitch being stuck up for rape, huh.

D. Well.

F. I mean being for rape.

D. Well that's standing right now, that's that's tentative, I would imagine at this point, that's still under investigation.

F. It's gonna cause her just as much misery and grief as it's gonna cause me, I mean, appearing in court, you know...I ain't gonna talk with no public defender, I'm gonna talk with a lawyer, somebody that's going to fight for me.

D. That's your perogative (sic) you know, we're not about to try and tell you that you can't...just a...what I'm saying is that a and I think you, I don't know if you understood that or if you're familiar with that type of investigation and police work because all yours has generally been apparent, and from what you said just straight robberies and stuff and that's just fingerprints and you know, stolen goods and now we're talking about something else that's probably completed (sic) new

to you, so if you can understand that and digest it.

F. Well I would say that I understand...the charge.

D. I guarantee you, no, no, I, I, don't mean the charge, I'm talking about the situation, we're not going to charge you for nothing, we're charging you, you know, with good physical evidence or we're not charging you and that part is still under investigation, whereas, there was a rape committed, this woman's been sexually assaulted and you'll be charged for it. I'm sure there wasn't anyone else in the house.

F. Why not her husband was there.

D. Her husband, he couldn t rape her, legally.

(23)

F. All right, legally he couldn't rape her right, he couldn't rape her, have had sex, he could have had sexual (sic) with her,

D. Yes, but he couldn't leave the same physical evidence that you would leave, Larry.

F. What physical evidence would I leave?

D. Sergeant Smith told you before, that it would be hair from your body even parts of your skin flake off, there's the the semon (sic) that you would leave, all this stuff adds up and it only adds up to one person, it doesn't add up to two guys or somebody different, you understand, your hair can be identified as yours, yourskin could be, right, I mean, you know, you go like that and and scratch yourself like that, and watch if flake off, you don't have to do

it very hard...hey, I don't have to tell you anyway, no, this is something I just figured I, you know, would tell you anyway, no, this is something I just figured I, you know, would tell you anyway, no, would enlighten you and if you and if you want to make a go of it that's your business, you want a lawyer and fight it that's your business too, you were told that at the beginning, even before you talked to us, right.

F. How long will it take them tests?

D. How long will it take the tests?

F. How long will it take those tests?

D. The tests...that they took, I really couldn't tell you.

F. Don't they have to take something from me?

D. I really couldn't tell you, I would imagine...did they take your clothes?

F. Yeah, with salt water in them.

D. That's all right...they can identify all that.

F. I don't think so, they were soaking wet.

D. Huh?

F. The clothes were all soaking wet.

D. Yeah...There's plenty of you there you know, in the clothes.

S. This gentlemen here is State Detective Ernest Draper, he works for the State's Attorney's office, have you ever seen him before?

F. Ugh Ugh (Negative)

S. Huh?

F. No.

S. No, well he's been up there quite awhile at the State's Attorney's Office and they say he's done...

F. Superintendent of what?

(24)

S. State's Attorney in Bridgeport.

F. Superior Court?

S. Superior Court.

S. Are you getting warm, Larry, are you warming up?

Dr. What did you do jump in the river and what happened when you jumped in the river?

F. Nothing.

D. The police boat came along.

F. There was somebody there, I was there.

S. How did you end up in the river, Larry?

F. I jumped in.

S. What did you jump in for?

F. Things were getting hot in the shore.

S. What do you mean things were getting hot?

F. Things were getting hot on the shore so

I jumped in the cold water.

S. Larry, you want to tell him exactly what you told us, you don't mind do you.

F. State's Attorney's office, man, come on man, man who comes from the Superior Court...(Indiscernable)...tell him what?

S. He's a nice guy.

F. Yeah, I'm a nice guy too.

S. Two nice guys talking. There's nothing wrong with that, is there?

F. ...then (sic) (when) your life is at stake there is.

S. Are you afraid of the State's Attorney's office? They are nice fellows up there.

F. Nice to who?...They ain't been nice to me.

S. Why? You never saw...When weren't they nice to you, Larry?

F. Quite a few times...'68...If it was just a burglary or something like that there I could understand and maybe even understand a little bit of robbery, robbery involved, but rape, man, that's ridiculous, I tell you I just can't accept that charge there, you'll have to fight to get a rape.

S. No sweat on burglary, right?

F. No.

(25)

Dr. Are you trying to say that the only thing the only crime you committed was the

burglary, right?

F. That's right...no devious (sic) assault acts.

Dr. How...what did you take in the burglary?

F. Oh the silverware, jewelry, change.

Dr. Where was this, what house was this?

F. I don't know what house it was.

Dr. How did you get there?

F. I got there by car, I took my mother's car,...really I got out here by accident, I got lost.

S. What kind of a house was it?

F. Well, it looked li[illegible]e...looked like something like a beach house or something.

Dr. A wooden frame house?

F. Looked like it was wooden...and maybe sorta maybe as...like a ranch house.

Dr. And what color?

F. You have a cigarette?

D. I don't have one.

F. I guess it was brown and white.

Dr. Brown and white?

F. Glass.

Dr. You smoke Salem?

F. (Indiscernable)...Thank you.

Dr. A brown and white house?

F. (Indiscernable)

S. Who was in the house when you got there?

F. Nobody.

S. No one was there?

F. Nope.

S. Did they come in while you were there?

F. Not for the first five minutes...five or ten minutes after, I guess, they came in.

(26)

S. Who came in Larry?

F. The whole family.

S. How many were there?

F. Four.

S. Four?

S. Where's the television set and the silverware now, Larry?

F. It was in the other car.

S. In whose car?

F. Their's.

Dr. Did it look like a ranch house?

F. (Indiscernable)

S. What was it a brown house with white trim or a white house with brown trim?

F. Looked like it was brown with white trim house. (Indiscernable)

D. You need some coffee, Larry.

F. Heah.

F. I didn't know we had a tape recorder running...I'm sitting up here making up stories, too and a tape recorder is on... (Indiscernable)

S. What kind of stories, Larry?

F. My mother's house is brown and white, too. ...That must have been what I was thinking about, my mother's house...

S. Who was making up stories, Larry?

F. Me...I'm a bitch of a liar...been that way ever since my early childhood...fell out of a tree...on my head and never been the same since...a tape recorder, how awful.

S. What time did this all happen this morning?

F. I don't really know, man. I'm just a colored colored dude ran out of gas and all of a sudden the police pop up and I panic because I don't have no license and I took my mother's car without her permission and I just panicked...and I got arrested...still don't know what I'm arrested for...today Monday of (sic) Sunday.

S. Sunday.

END OF DOCKET